Railroad legislation in Minnesota, 1849 to 1875 /

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RAILROAD LEGISLATION IN MINNESOTA, 1849 to 1875.*

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BY RASMUS S. SABY.

CHAPTER I. TERRITORIAL RAILROAD LEGISLATION, 1849–1857.

The Territory of Minnesota was organized by an act of Congress approved March 3, 1849. It comprised all of what is now the state of Minnesota and the portions of the Dakotas east of the Missouri and White Earth rivers. The legislative power of the territory was vested in a governor and a legislative assembly consisting of a Council and a House of Representatives. The laws in force in the Territory of Wisconsin at the date of its

admission into the Union continued valid and operative in the Territory of Minnesota as far as applicable, but were subject to change by legislative enactment. Alexander Ramsey of Pennsylvania was appointed governor of the new territory.

There were in 1849 only a few straggling settlements along the principal rivers. According to the territorial census taken that year, the population numbered 4,680.1 The assessable property amounted to only $414,936. The Sioux Indians still 1

1 House Journal (Minn.), 1849, p. 214.

2 occupied the land west of the Mississippi, and Minnesota on the whole was “unsettled and unsurveyed.”2

2 Council Journal (Minn.), 1849, p. 187.

But the pioneers had an unbounded faith in the future. Governor Ramsey, in his first message to the legislative assembly, said: “No portion of the earth's surface perhaps combines so many favorable features for the settler as this territory. * * * The immigrant and the capitalist need but perceive these sources of prosperity and wealth to hasten to seize upon them by settling among us. * * * * It may not be long ere we may with truth be recognized throughout the political and moral world, as indeed the ‘polar star’ of the Republican Galaxy.”3

3 Council Journal, 1849, p. 7.

But though the early settlers saw visions of future greatness and wealth, their present condition was not so ideal. The eastern markets on which they were largely dependent were distant and not easily accessible, and the different settlements were in poor and primitive communication with each other. There was but one mail route leading into the territory, on which was transmitted a weekly mail from Prairie du Chien, Wisconsin, during the season of navigation, and a semi-monthly mail from the same place during the winter season.4 Many new roads were needed, and some of the existing roads were so bad

that at times many settlers were prevented from procuring even the most necessary supplies.5 Nine memorials concerning roads and mail routes were sent to Congress in 1849,6 and to all these Congress “responded in the affirmative and made the necessary appropriations.”7 The governor reported in his message to the legislature in 1853 that work was progressing satisfactorily on both old and new roads.8

4 From Memorial to Congress, Laws of Minn., 1849, p. 171.

5 Laws of Minn., 1849, Memorial, p. 172.

6 Laws of Minn., 1849, Memorials Nos. 1, 3, 4, 6, 9, 10, 11, 13, 14.

7 House Journal, 1851, p. 22.

8 Council Journal, 1853, p. 32.

Wagon and military roads were necessary and answered their purposes, but other means of transportation were fully as essential to the growth and development of the new territory. 3 The magnificent river systems seemed to afford an admirable means of connecting the different parts of the territory with each other, and the whole with the outside world. Congress had provided for roads, why should it not also open these natural highways of commerce? The improvement of the “majestic Mississippi,” with its gigantic trade affecting the interests of so many states, seemed logically an object of national magnitude and national importance.

It was urged that the improvement of the rivers would expedite the sale and facilitate the settlement of the public lands through which they flowed. And besides, had not the federal government assumed special jurisdiction over all navigable streams?9 Congress, however, was not disposed to undertake any such “internal improvements.” Its activity in this line had ceased back in President Jackson's administration.

9 House Journal, 1851, p. 16.

By this time railroad construction had made great progress in many of the older states. Wisconsin territory, of which Minnesota territory had been a part, had incorporated a number of railroad companies, two of them as early as 1836;10 but naturally, what later came to be Minnesota was not much affected either by the agitation or by the projects at this time.

10 Laws of Wisconsin, 1836, pp. 33 and 54.

Minnesota territory soon saw the advantages and possibilities of the railroad. Already in 1851, its legislative assembly memorialized Congress for a “liberal donation and appropriation” in aid of railroads.11 A bill to incorporate a railroad company passed the house of this assembly, but was negatived in the council.12 In 1852 an attempt was made to incorporate another railroad company, but the bill failed to pass the house in which it originated.13

11 Laws of Minn., 1851, Memorial No. 4.

12 St. Paul and St. Anthony Ry. Co., H. F. No. 15; House Journal, 1851, pp. 127, 150.

13 Lake Sup. and Miss. Ry. Co., H. F. No. 46. House Journal, 1852, p. 184.

By 1853 the transportation problem assumed a different phase. The boasted river systems were seen to be inadequate, even though they were extensively improved. They would 4 have to be supplemented by railroads, if the territory were to enjoy proper transportation facilities. A railroad would be needed to connect the navigable waters of the Mississippi and of the Red river of the North, and another to connect the Mississippi with Lake Superior.14 The arguments which had been used to urge Congress to build roads and improve rivers were now used in favor of federal aid in railroad construction. Land grants had been made to aid in the construction of canals in a number of states; but attempts to

secure land grants for railroads for a long time proved futile, even though the transfer of the grant for the Illinois and Michigan canal to a railroad company as early as 1833 might easily have been taken as a precedent.15

14 Message of Gov. Ramsey, Council Journal, 1853, p. 30.

15 4 U. S. Statutes, 662.

Through the repeated efforts of Stephen A. Douglas and others, the Illinois Central railroad received a federal land grant in 1850. In supporting the measure. Mr. Douglas argued: “It is following the same system that was adopted in reference to improvements of a similar character in Ohio, Indiana, Alabama, Wisconsin, and Illinois in reference to her canal. It is simply carrying out a principle which has been acted upon for thirty years, by which you cede each alternate section of land and double the price of the alternate sections not ceded, so that the same price is received for the whole…It is an old practice long continued by the government.”16

16 . Congressional Globe, 1850, p. 845.

In 1853 Governor Ramsey recommended that the legislative assembly memorialize Congress for similar grants in aid of Minnesota railroads.17 The sentiment was strong that public lands ought to be so managed as to secure their speedy settlement. Besides getting aid for their railroads, the territory would through such grants secure the extinction of the federal title to the land, which many considered only secondary in importance to the extinction of the Indian title.18 The governor outlined quite definitely what soon came to be the settled railroad construction policy of the territory, namely, through

17 Council Journal, 1853, p. 30.

18 Ibid., p. 31.

5 federal aid, in the form of land grants, to build railroads in advance of actual business needs to settle the country and develop its resources. But the legislative assembly evidently did not support the governor's plan by acclamation. Three memorials to Congress concerning railroads, and railroad grants were drawn up, but they all failed to pass.19 Seven bills to incorporate railroad companies were introduced at this session, of which five passed after discussion and amendment.20 Only two of these charters make any mention of probable federal or state land grants.21

19 Council Journal, 1853, p. 29; H. F. No. 1; House Journal, 1853, pp. 108 and 198; C. F. Nos. 2 and 3.

20 See House Journal, 1853, Index. C. F. Nos. 2, 6, 7, 16, 21, passed; C. F. No. 11 and H. F. No. 4 did not pass.

21 Laws of Minn., 1853, ch. 10, sect. 18; ch. 16, sect. 14.

In 1854, the Minnesota and Northwestern Railroad Company was incorporated, and by its charter any future federal land grant was made over to it in fee simple “without any further deed and action.” The same assembly memorialized Congress for a grant of land.22 Congress complied, but provided that the land should not accrue to any railroad company already “constituted or organized.”23 Friends of the Minnesota and Northwestern, however, managed to get this provision enrolled as “constituted and organized.”24 Since the company, though incorporated, was not yet definitely organized, this change would give the company a technical claim to the land. But the change was discovered, and an investigation followed. The result was a repeal of the land grant act about a month after its enactment.25 The right of Congress to repeal the act was contested, but after a long process of litigation the repeal was held valid by the United States Supreme Court.26

22 Laws of Minn., 1854, p. 159.

23 10 U. S. Stat., 302.

24 Council Journal, 1855, App. p. 5

25 10 U. S. Stat, 575.

26 Rice vs. Minn. and N. W. R. R. Co.

A tremendous spirit of opposition was aroused on the chartering of this of this company. It was claimed that the legislature had acted without sufficient consideration; that the territory had secured no “resulting interest” in the land grant; and 6 that, as there was no provision in the charter authorizing its amendment, the company had been placed beyond the reach of future legislative action. The agitation did not diminish when it became known that the eastern financier on whose means the company had mainly depended for the construction of the railroad had disappeared and “become a fugitive from the justice of the community he had basely swindled.”27 The people were all anxious to get railroads, for they appreciated their vital importance for the future development of the territory; but for this very reason many were unwilling to give private corporations full control of these quasi-public agencies. They wanted to keep them under effective public control.

27 House Journal, 1855, App. p. 44.

When an amendment to the charter was proposed in 1855, Governor Gorman,28 in a special message concerning the Minnesota and Northwestern railroad company, asserted that the purpose of this amendment was evidently to cure all failures and defalcations of the company. He urged the assembly to do what it could to secure the repeal of the charter by Congress.29 On the other hand, the assembly received numerous petitions from interested districts expressing full confidence in the railroad company.30 The contested amendment was passed by a large majority,31 and when it failed to get the signature of the governor it was without difficulty passed over his veto.32 Other amendments to this charter were made during this session, apparently on the assumption that the company had a legal right to the land grant.

28 Succeeded Gov. Ramsey, May 15, 1853.

29 Council Journal, 1855, App. p. 73.

30 House Journal, 1855, see App.

31 Council Journal, 1855, p. 142.

32 House Journal, 1855, App. p. 143.

In his message to the legislative assembly the next year, 1856, the governor reported that the Minnesota and Northwestern railroad company had not made the $150,000 guarantee deposit required of it, the amendments to its charter had not been accepted, and no money had been expended in the construction of the railroad.33

33 Ibid., 1855, App. p. 6.

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Many railroads had been incorporated since 1853, but none of them proved very active. In the meantime the territory was growing rapidly in population and in wealth. By 1857 Minnesota had over 150,000 inhabitants and taxable property amounting to nearly $50,000,000.34 The need of railroads was felt more keenly than ever. Said Governor Gorman: “I should be glad to see an outlet by railroad from our winter home at any sacrifice of individual opinion as to policy, and indeed any other reasonable sacrifice, save the honor of the territory and the enthrallment of those who take our places.”35

34 Second Annual Report of the Com. of Statistics for 1860–61, p. 121.

35 House Journal, 1855, App. p. 7.

It was long believed that, though formidable objections might exist to granting land to states for railroad purposes, such objections could not be raised against grants to

territories under the quasi-guardianship of the general government.36 But it was now realized that the same objections applied, and that a territory did not occupy such an enviable position after all.

36 Council Journal, 1855, App. p. 39.

It was also of vital importance to Minnesota at this time that “she be a state and fully represented” at Washington, because of a projected railroad to the Pacific. The newly organized Republican party and the Democratic party both asserted in their platforms of 1856 that it was the duty of the federal government to aid such a road.37 It was firmly believed that the final location of this road would determine whether Minnesota was to become the “wealthiest of states” or a “mere feeder.”38 The gravity of the situation awakened a sense of responsibility, and the territory became eager to step out from the dependent position and to assume the duties and privileges of statehood.

37 McKee, The National Convention and Platform of all Political Parties (1789–1900), pp. 99 and 94, resp.

38 House Journal, 1857, p. 43.

Minnesota territory had reasons to be grateful to the twenty-fourth Congress. The Minnesota enabling act was passed February 26, 1857,39 and one week later extensive land grants

39 11 U. S. Stat., 166.

8 were made to aid the construction of Minnesota railroads.40 A special session of the legislative assembly was convened to consider these acts. Minnesota was now free to “organize her own institutions in her own way,” and the land grants were hailed as inaugurating a new era in the progress of her people.41

40 11 U. S. Stat., 195.

41 Council Journal, 1857, Ex. Session, p. 6.

The legislative assembly accepted the land grants in trust and granted them conditionally to four railroad companies, three of which had been previously incorporated. These have become known as the land grant companies. With St. Paul and Minneapolis as a center, they were planned primarily to market the grain raised in the Mississippi and tributary river valleys in Minnesota and in the great Red river valley in the Northwest.

1. The Minnesota & Pacific Railroad Company was incorporated at this session and authorized to build a railroad from Stillwater by way of St. Paul, St. Anthony and Minneapolis, to Breckenridge, with a branch from St. Anthony to St. Vincent.42

42 Laws of Minnesota, 1857, Extra Session, p. 4.

2. The Transit Railroad Company was to build a line from Winona by way of St. Peter to the Big Sioux river south of the 45th parallel of north latitude.43

43 Ibid., p. 16.

3. The Root River and Southern Minnesota Railroad Company was to build one railroad from La Crescent via Target lake up the valley of the Root river to Rochester, and another railroad from St. Paul and St. Anthony, via Minneapolis, Shakopee City, Mankato and other cities, to the Iowa line “in the direction of the mouth of the Big Sioux river.”44

44 Ibid., pp. 18 and 20.

4. The Minneapolis and Cedar Valley Railroad Company was to build a railroad from Minneapolis to the south line of Minnesota west of range sixteen.44

In consideration of the lands granted and the charter privileges given, these companies were to pay into the state treasury annually three per cent of their gross earnings in lieu of all other taxes, and their lands were to be exempt from taxation till sold or conveyed.

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The constitutional convention met in St. Paul the second Monday in July, as provided for in the enabling act:45 and according to an act passed by the territorial legislature in its special session.46 To be more exact, two conventions met, for the Republican and the Democratic delegates met separately. Owing to irregularities at the election, there were many disputed seats and both parties planned to capture the organization of the convention. As a result both factions organized independently. Neither recognized the existence of the other, and the two are reported separately.47 But unofficially they compared notes as they proceeded, and finally, through appointed conferees, they agreed on the same constitution, word for word.48 The constitution, emanating as it did from both conventions and duly signed and certified by each, was ratified almost unanimously by the people.

45 Passed Feb. 26, 1857.

46 Laws of Minn., 1857, Extra Session, ch. 99.

47 The Debates and Proceedings of the Minnesota Constitutional Convention, officially reported by Francis H. Smith (Dem.); Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota, T. F. Andrews, official reporter to the Convention (Rep.)

48 Folwell, Minnesota, p. 141.

The main provisions of the constitution limiting the powers of the legislature in its relations with private corporations are the following: First, for the purpose of defraying extraordinary expenses the state may contract public debts not exceeding $250,000, except by a

two-thirds vote of both houses, years and nays recorded;49 second, the state should never contract any debts for works of public improvement, or be a party in carrying on such works, except as a trustee in cases where land or other grants have been made specifically for such purposes;50 third, the credit of the state was never to be given or loaned in aid of any individual association or corporation;51 fourth, no corporation was to be formed under special act, except for municipal purposes;52 each stockholder in any corporation

49 Const. of Minn., Art. 9, sec. 5.

50 Ibid., sec. 5.

51 Ibid., sec. 10.

52 Art. 10, sec. 2.

10 was to be liable to the amount of stock held;53 and common carriers enjoying right of way privileges were to be bound to carry mineral, agricultural and other productions, or manufactures, on equal and reasonable terms.54

53 Ibid., sec. 3.

54 Art. 10, sec. 4.

These are vital provisions. The first two show that the delegates at the conventions wished Minnesota to profit by the example of other states, which by aiding and carrying out internal improvements had brought themselves to the verge of bankruptcy and in some cases to actual repudiation.55 Incorporation of companies by special act was forbidden, to do away with the practice of granting special privileges to railroad and other companies.56 The clause was not passed without opposition, for it was firmly believed by many that railroad corporations necessarily required special privilege, and that it would be impossible to frame a general law applicable to all.57

55 For instances see Scott, Repudiation of State Debts.

56 Minn. Constitutional Debates, F. H. Smith, reporter; Speech of Mr. Sibley, p. 121.

57 Ibid., see pp. 124–177.

The clause fixing the liability of stockholders was inserted to insure a greater degree of responsibility in all commercial and industrial ventures, including railroads and railroad construction. The most advanced provision is that which by implication declares railroads to be common carriers and attempts to secure the various industries of the state against unjust discriminations by obliging them to carry the different products at equal and reasonable terms.

CHAPTER II. A COMPARATIVE STUDY OF THE TERRITORIAL CHARTERS.

The territorial legislature of Minnesota incorporated twenty-seven railroad companies. With the “Act to provide for the incorporation and regulation of railroad companies.” passed by the first state legislature in pursuance of article 10, section 2, of the constitution, grants of special railroad charters ceased, at any rate formally. Old charters were, however, frequently “revived and continued” and answered the purpose of new special charters.

11

Railroad Charters Granted by the Territory.

No. Name of Company. Date. Citation, Session Laws of Minn. 1. St. Paul and St. Anthony Falls, March 2, 1853 1853, Ch. 12. 2. Minnesota Western, March 3, 1853 1853, Ch. 10. 3. Louisiana and Minnesota, March 5, 1853 1853, Ch. 6. 4. Mississippi and Lake Superior, March 5, 1853, 1853, Ch. 15. 5. Lake Sup., Puget Sound and Pacific March 5, 1853 1853, Ch. 16. 6. Minn. and Northwestern, March 4, 1854 1854, Ch. 47. Transit (not accepted by company), March 4, 1854 1854, Ch. 33. 7. Root R. Valley and Southern Minn., March 2, 1855 1855, Ch. 24. 8. Transit, March 3, 1855 1855, Ch. 27. 9. Winona and LaCrosse, Feb. 5, 1856 1856, Ch. 159. 10. Minneapolis and St. Cloud, March 1, 1856 1856, Ch. 160. 11. Minneapolis and Cedar Valley, March 1, 1856 1856, Ch. 166. 12. Lake Sup. and Northern

Pacific, March 1, 1856 1856, Ch. 158,* p. 301. 13. Mississippi and Missouri, March 1, 1856 1856, Ch. 163. 14. Northern Pacific, March 1, 1856 1856, Ch. 165. 15. Lake Superior and Central Minn., March 1, 1856 1856, Ch. 158* p. 280. 16. Hastings, Minn. R. and Red R. of the North, Feb. 20, 1857 1857, Ch. 39. 17. Nininger, St. Peter and Western, March 4, 1857 1857, Ch. 7. 18. Minn., and Dakota, March 4, 1857 1857, Ch. 24. 19. St. Paul and Taylor's Falls, March 7, 1857 1857, Ch. 17. 20. Minn. Air Line, May 22, 1857 1857, Ex. Ses., Ch. 71. 21. Minn. and Pacific, May 22, 1857 1857, Ex. Ses., Ch. 1. 22. Mississippi Valley, May 22, 1857 1857, Ex. Ses., Ch. 27. 23. Lake Sup. and Crow Wing, May 23, 1857 1857, Ex. Ses., Ch. 74. 24. Mississippi R. Branch, May 23, 1857 1857, Ex. Ses., Ch. 53. 25. Minn. and Northwestern, May 23, 1857 1857, Ex. Ses., Ch. 49. 26. Minn. Central, May 23, 1857 1857, Ex. Ses., Ch. 2. 27. Neb. and Lake Superior, May 23, 1857 1857, Ex. Ses., Ch. 93. (Minn. Improvement Co., authorized to build a railroad), May 23, 1857 1857, Ex. Ses., Ch. 56.

* Two chapters are numbered the same.

12

For convenience in reference, these charters are numbered in the order of their approval. Where several charters were granted the same day the order is arbitrary.

Number 27 is not included in the list of railroad companies chartered by the territorial legislature, given by the railroad commissioner in his report in 1871.58 But as it was accepted by the company59 and later “amended and continued,”60 there is no reason for excluding it.

58 Report of the Railroad Com. (Minn.) for the year 1871, p. 5.

59 Records in the office of the Secretary of State.

60 Special Laws of Minn., 1861, Ch. 1.

These territorial charters form an interesting comparative study. A uniform incorporation law would have worked no hardship on any of the companies incorporated, for all were to be built and operated under very similar conditions; and though conditions may have been

somewhat different, an examination of the charters will reveal few variations which can be traced to any such legislative forethought. The form of the charter, as well as its contents, was in the main determined by the railroad promoter, for whom the varied charters of the other states served as models, and not by the legislature. The charter proposed by the promoter, sometimes amended to be sure, became the charter of the railroad company. For this reason we find that charters passed during the same session, and often on the same day, are quite dissimilar.

Though very dissimilar in many respects, the general plan of the charters is much the same in all. In all but two61 the named incorporators, and their successors and assigns, are declared to be a body corporate with usual corporate powers. A part or all of these incorporators are to constitute a board of commissioners, under whose direction subscriptions may be received after due announcements. A certain amount of cash is to be paid down on each share subscribed for, and, after a specified amount of stock is subscribed and cash paid in, the commissioners are to call a meeting of stockholders for the purpose of organizing. A board of directors is to be elected. Every share entitles its holder to one vote, and stockholders may vote by proxy. The directors are, as a rule, given quite

61 . Nos. 18 and 23.

13 unrestricted powers. They are to manage the affairs of the company and make all needful rules and regulations; but the provision, “not inconsistent with the constitution of the United States or with the laws of this territory,” is frequently added. The directors are authorized to make “calls” on unpaid subscriptions, within a maximum amount usually stated; and noncompliance, in all but three cases, involves forfeiture. The amount of capital stock is fixed, but generally an upper limit is mentioned to which it may be raised by the directors with the consent of the majority of the stock.

Right of way is given through private and public property and across streams, public and private roads, and highways. Additional lands may also be acquired when necessary

for railroad purposes. In cases of expropriation, methods of settlement are in all cases designated. The usefulness of roads and streams is not to be essentially impaired.

Nearly all the charters provide for connecting and uniting, and some also for consolidation, with other railroad companies. The power to borrow money, give security, and issue bonds, is quite generally given. Penalties are imposed for damaging or obstructing the railroads. There is always a time limit set for completing at least a part of the projected railroad, and often also for organizing the company and beginning work. More than half of the charters are declared to be public acts, and in most of them provisions are made for amendment by the legislature.

This is in short the outline of the normal Minnesota railroad charter. The plank road and canal charters follow much the same plan. But the provisions in respect to these different general features vary considerably, both as to wording and content, while numerous special features are brought in. Some, however, have many provisions in common, with many sections verbatim alike, and in a few instances whole charters are almost identical. With few exceptions, the charters may be placed in groups, but within these groups again some may in turn resemble each other more closely than others.

Numbers 5, 11, 20, 24, and 25, may be said to constitute one such group. Number 5 differs from the others mainly in providing different expropriation proceedings. Sections 6 to 15, 14 inclusive, of number 11, are “adapted and enacted as parts” of number 24, “to be known and numbered as therein known and numbered.” Numbers 5 and 11 name the commissioners who are to open books, while the others make this the duty of the incorporators or a part of them. The general trend of these charters is like some of those granted by Wisconsin. The right of way proceedings of all but number 5 are verbatim like those found in an amendment to the Madison and Beloit railroad charter.62 The provision as to borrowing money and issuing bonds, which may be exchanged for stock as the directors may provide, is much like section 16 of the Ohio and Mississippi railroad charter

of Illinois; and numbers 11, 24, and 25, have similar provisions also as to uniting and connecting with other roads.63

62 Laws of Wisconsin, 1851, p. 203.

63 Private Laws of Illinois, 1851, p. 89.

Numbers 18 and 23 are very similar, and with these might be placed the railroad franchises given the Minnesota Improvement Company, but these do not appear to have been made use of. These two charters appoint the named persons commissioners, under the majority of whom subscriptions may be received; when the stockholders organize, they are to become a body corporate. These charters can easily be traced to Wisconsin. Most of their provisions may be found almost verbatim in such charters as those of the Lake Michigan and Mississippi,64 Madison and Swan Lake,65 La Crosse and Milwaukee,66 Racine, Janesville and Mississippi,67 railroad companies, incorporated by that state. The fifty-year corporation life limit is, however, not found in the Wisconsin charters. The first plank road charter granted in Minnesota68 may also be traced to the same source.

64 Laws of Wis., 1847, p. 72.

65 Laws of Wis., 1851, p. 172.

66 Laws of Wis., 1852, p. 325.

67 Laws of Wis., 1852, P. 591.

68 Laws of Minn., 1849, p. 91.

Another group is numbers 12, 14, and 15; and with these may also be placed numbers 2 and 4. Number 2 is very similar to the Beloit and Madison railroad charter.69 Number 4 is almost verbatim like that of the New Haven and Monroeville railroad

69 Laws of the State of Wis., 1848, p. 161.

15 company, chartered by Ohio.70 The provision limiting the bond issue to three-fourths of the amount actually expended may be traced to an amendment of the Beloit and Madison charter.71 The right to reciprocal use of railroads at connecting points is like section 23 of the Northwestern charter.72 Judging from internal evidence, it would seem that number 4 came directly from Ohio, while the others came by way of Wisconsin.

70 Local Laws of Ohio, 1836, p. 357.

71 Laws of Wis., 1851, p. 203.

72 Laws of Wis., 1852, p. 646.

The largest group is that which comprises numbers 7, 8, 9, 10, 13, 16, 19, 26, 27, and perhaps also numbers 6 and 17. The Transit charter of 1854, which was not accepted, would have belonged to this group. Number 6 is derived quite directly from the Illinois Central charter.73 Governor Gorman characterized it as substantially like the Illinois Central, except that it left out nearly, if not quite, all the guards and securities expressly provided for in the Illinois charter.74 In the effort to float capital into the country to undertake railroad construction in advance of the economic needs, frontier railroad legislation almost always had a tendency to be very liberal. The provisions of the charters of this group may nearly all be derived from Illinois charters, especially from the Illinois Central. The provisions concerning bell or whistle, railroad crossing signs, badges to be worn by trainmen, and fencing, are similar to those found in Illinois,which had been derived from New York charters. Such regulations were not so frequent in Wisconsin and Ohio charters. It may be of interest to not that the charter incorporating the Minnesota Point Ship Canal Company75 betrays a common origin with this group.

73 Private Laws of Ills., 1851, p. 61.

74 Council Journal, 1855, p. 122.

75 Laws of Minn., Ex. Ses., 1857, Ch. 75.

Numbers 1, 3, 21, and 22, do not resemble each other particularly, nor do they fit into any of the foregoing groups. Number 1 is in many respects very similar to the Wellsville and Pittsburgh railway charter granted by Ohio,76 and also to the Dayton and Western charter to the same state.77 . The provision authorizing the borrowing of money resembles an act

76 Local Laws of Ohio, 1846–7, p. 183.

77 Ibid., p. 93.

16 authorizing the Mad River and Lake Erie railroad company to borrow money.78

78 Local Laws of Ohio, 1846, p. 27.

In number 3 we find the first twelve sections practically verbatim like those of the charter of the Alton and Springfield railroad,79 granted by the Illinois legislature in 1847, and some of the remaining sections are also similar. One peculiarity of this charter is that it provides that in expropriation land shall be taken “as provided by the act [of Congress] concerning right of way approved March 3, 1845.” The words “of Congress” were inserted in brackets by way of explanation, but are misleading. Congress passed no such act on that day. The act cited is an act of the legislature of Illinois,80 and was referred to in the Illinois charter; this provision was copied in the Minnesota charter together with the rest.

79 Private Laws of Ills., 1847, p. 144.

80 General Laws of Ills., 1845, Ch. 92, p. 478; approved March 3, 1845.

Number 22 may be traced to Wisconsin. It bears a strong resemblance to the Northwestern81 and the Beloit and Madison82 charters of that state.

81 Laws of Wisconsin, 1852, p. 646.

82 Ibid., p. 55.

The provisions of number 21 are mostly derived from Wisconsin. The first part resembles some Illinois charters;83 but the main provisions may be found in the Arena and Dubuque charter84 and the land grant charters and enactments of Wisconsin in 1856.85 Likewise the other land grant enactments of Minnesota in 1857 may be traced directly to this source. The general railroad incorporation law of 1858 is from beginning to end almost verbatim like that of Ohio.86

83 Private Laws of Ills., 1849, p. 78; 1851, p. 61.

84 Gen. Laws of Wis., 1856, p. 680.

85 Ibid., p. 239, Ch. 137; p. 217, Ch. 122.

86 Revised Laws of Ohio, 1854, Ch. 29, p. 191.

It would be difficult in most instances to point out with any degree of certainty the exact charters which served as models for those of Minnesota. The similarity may in some cases merely indicate a common origin. I think it quite safe to say that Minnesota got nearly all her charter provisions from Ohio, Wisconsin, and Illinois, especially from the two latter. A few 17 scattered provisions may have been taken directly from New York, Pennsylvania, or New England charters. It is but natural that railroad promoters in a frontier territory like Minnesota should look to the neighboring states, in which railroads were developing under very much the same conditions, for charter models.

The length of the charters varies from twelve to thirty-three sections, the maximum being in numbers 17 and 22, which were passed in different sessions of the same year. The number of incorporators varies from eight to twenty-six (the maximum in numbers 8 and

27). The number of incorporators, however, plays no important part. W. A. Gorman, on the floor of the constitutional convention in 1857, said that many were included merely for the purpose of organizing the company and never owned any stock at all.87 Mr. Meeker added that probably one-half the names mentioned in the acts granting charters are of persons who are not even aware that such charters are in existence.88 In 1853, when the bill to incorporate the St. Paul and St. Anthony Railroad Company (C. F. No. 7) was before the house, it was moved in the committee of the whole to amend the bill by adding to the list of incorporators four new names and the names of the members of the legislative assembly.89 This amendment, however, was not accepted by the council. But seven new incorporators a were inserted by the house in the bill to incorporate the Louisiana and Minnesota (C. F. No. 6), and the council accepted the amendment.90 In the Minnesota and Northwestern charter the names of Governor Gorman and Secretary Rosser “were inserted without being consulted on the subject, and both gentlemen were desirous that their names should not be used in connection with any act of the legislature of this character.”91 This is indicative of the loose methods of legislation in vogue at the time. The incorporates were in no way responsible for the debts incurred. The system was vicious and would not be tolerated anywhere but in a frontier settlement. 2

87 Const. Debates, Reported by Francis H. Smith, p. 225.

88 Ibid., p. 225.

89 House Journal, 1853, p. 138.

90 Ibid., p. 137.

91 Council Journal, 1855, p. 212.

18

The number to constitute the board of commissioners varies, and is often quite indefinite. In some cases all the incorporators or a majority of them are authorized to open

books. In two charters (numbers 5 and 11) certain of the incorporators are named as commissioners. The method most frequently provided is for the incorporators to appoint three of their number to serve in this capacity. Two charters (numbers 18 and 23) began by naming the commissioners, “under a majority of whom subscriptions may be received to the capital stock of the railroad company hereby incorporated.” Ten charters92 provide for the meeting and acceptance of the charters on the part of the incorporators.

92 Nos. 6, 7, 8, 9, 13, 16, 19, 22, 26, 27.

The amount of capital stock varies greatly, and not entirely with the length of the road proposed. The lowest is $40,000; and the highest $50,000,000, with the privilege of raising it to $100,000,000. The last is quite remarkable for a territory having taxable property listed at less than two and a half million dollars. The legislators seem to have been guided by no economic principle as to stock issue. It appears that neither they nor the promoters had any definite idea of the amount of capital necessary to carry out the enterprise,but some and generally an ample amount was allowed as a matter of course to get the work started. The charter of the Minnesota and Northwestern93 was, however, an exception. It provided that the capital stock of that corporation should be $10,000,000, which might be increased from time to time to any sum not exceeding the entire amount expended on the road. This is an approach to capital stock regulation, but would most likely not be very effective in practice. Too much depended on the mere assertion of the company. Mr. A. J. Edgerton, the railroad commissioner, in his report for the year 1873, said: “The stock in nearly all the companies has been issued as a matter of accommodation either connected with transfers or in negotiating bonds. In only a very few companies does capital stock represent any money paid into the company. In some instances the original projectors, or localities interested, subscribed and paid for a certain amount of stock, but generally this stock

93 Nos. 6.

19 was wiped out by subsequent purchases of the road by issuing another class of stock. The complaint against watering stock hardly applies to railroads in this state from the fact that, in most instances, stock was issued without any cash equivalent, and representing no material assets, and consequently was hardly susceptible of dilution. The volume might be increased from time to time, but the consistency remained the same."94 Legislation regarding capitalization was lax in territorial days and from the above report it would seem that it continued lax for some time after. With two exceptions (numbers 7 and 13), shares of the capital stock were one hundred dollars each. Two charters (numbers 11 and 24) counties, cities, and towns, along railroad lines to buy stock and issue bonds in payment, when so decided by majority vote.

94 Ex. Docs., 1873, Vol. II, p. 132.

We find eleven charters95 which contain the provision that shares shall be deemed personal property. This was common in railroad charters and in general incorporation laws of the time. The provision was found in an amendment to a turnpike charter in Massachusetts as early as 1796.96 It had been incorporated into the Minnesota and Northwestern charter (No. 6), and when this charter was exposed to its fiery ordeal, this point was taken up for discussion. It was objected to because if shares were deemed personal property the stock could only be taxed where the owners resided. When Governor Gorman vetoed an act to amend the charter (No. 5, H. F.), he stated in his objections: "It is clear that this provision was to avoid taxation in Minnesota. I cannot therefore let go our right to tax their capital stock and all their property, real and personal."97 This and other objections were given, but they seemed to have little weight as far as this bill was concerned, for it passed both houses easily by the required two-thirds majority, and became a law.98 But two new charters granted this year (numbers 7 and 8) had both been amended by striking out this clause.99

95 Nos. 5, 6, 10, 11, 13, 19, 20, 21, 24, 25, 27.

96 Laws of Mass., 1796, Ch. 5, p. 8.

97 Council Journal, 1855, p. 126.

98 Ibid., p. 133.

99 House Journal, 1855, No. 48, H. F., p. 298; No. 5, C. F., p. 296.

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The amount of capital stock which must be subscribed before the stockholders could meet and organize varies greatly, not only in amount, but also in per cent of the total capital stock. One charter (number 17) provides that $500,000 must be subscribed, and five per cent paid down in cash; the amount of capital stock is to be $2,000,000. Another charter (number 20),m granted at an extra session the same year, only requires that “a sum not more than $50,000 shall have been subscribed to the capital stock,” which in this case is to be $5,000,000. This last was indeed a chance for the railroad promoter to begin work with little capital.

The maximum “call” for payment on capital stock is in three charters (numbers 1, 6, 21) placed at the discretion of the directors; two charters (numbers 3 and 17) have no provisions at all concerning this matter; in one (number 20) the maximum call is five per cent per month. From five to twenty per cent, ten per cent and ten dollars per share, in each case at the discretion of the directors but on at least thirty days notice, are the more common provisions. In three charters (numbers 1, 6, 21) it is provided that when installments are not paid, stock may be sold at auction, and the balance which may be left shall be paid over to the owner. The other charters all provide for forfeiture of stock on non-payment, due notice to be given in all cases.

Each share entitled the owner to one vote, which the might exercise in person or by proxy. In some cases it is provided that only shares with paid-up installments entitle the holder to votes. The directors are to be elected by majority vote. In only one charter (number

22) is there any irregularity in these respects. By this charter the land grant companies are authorized to subscribe to the capital stock in proportion to the length and cost of the roads built by each. The directors of the new company are to be elected from the different companies which are stockholders in proportion to the amount of stock held; but whenever individual subscriptions amount to $200,000, such stockholders shall be entitled to one director,and on larger subscriptions in like proportion.

The number of directors varies from five to fifteen; and in some cases where the companies are authorized to consolidate, 21 the new board of directors is not to exceed twenty-one. Twelve and nine are the most common numbers. Seven charters100 provide for a board of twelve directors who are to be divided into three classes, each class holding office for one, two, and three years, respectively. After the first election four new directors are to be elected annually for a term of three years. In other charters all the directors are elected annually. Directors are to be chosen from the stockholders. One charter (number 6) provides that all must be citizens of the United States and three of them residents of Minnesota; another (number 14), that one must be a resident of Minnesota; a third (number 27), that three must be residents of Minnesota; and a fourth (number 21), that a majority of the board of directors must be citizens of Minnesota. One charter (number 7) does not mention the election of directors at all.

100 Nos. 6, 8, 9, 10, 13, 16, 19.

Nearly all the charters provide that the directors may establish and collect such “tolls” or rates as they may deem reasonable. One charter (number 5), however, sets the maximum passenger rate at four cents per mile. An amendment to another101 sets the maximum rate at ten per cent above the rate charged by the Illinois Central. Rates were what would induce capital to build and invest, and it was but natural that the legislature at the time should be liberal.

101 To No. 6; Laws of Minn., 1855, p. 67.

The right of way is in all cases granted the railroad companies. The width of the right of way varies. Out of the twenty-seven charters, eight102 provide that land may be taken, not exceeding one hundred feet in width; one (number 2) sets the maximum at one hundred and thirty feet, except where more is necessary for turnouts, buildings and the like; another (number 17), at one hundred and fifty feet. In two charters there is no definite limit set, one (number 1) authorizing the company to “enter upon any land, to survey, construct and lay down said road,” not mentioning width at all, the other (number 3) authorizing the company to lay out their road wide enough for a double track. The remaining fifteen provide that the companies may appropriate to their own use and control,

102 Nos. 4, 12, 14, 15, 18, 22, 23, 25.

22 for the purpose of the railroad and its appurtenances, land not exceeding two hundred feet in width. In the second report of the industrial commission it is stated, “In California the unusual liberty of laying out its road not exceeding nine rods wide is given the company.”103 In Minnesota it was quite usual to authorize two hundred feet, or over twelve rods. Previous to 1855 the territory had no authority to grant right of way through public domain. Governor Gorman called attention to this fact in his message that year,104 just before Congress extended this right, which had for some time been enjoyed by states,105 also to territories106

103 House Docs., 57th Cong., 1st Session, Vol. 72, p. 896.

104 Council Journal, 1855, p. 125.

105 10 U. S. Stat., 28.

106 10 U. S. Stat., 683.

The method of effecting a settlement for lands taken for right of way or for other “necessary purposes,” where the owner was absent, incapable of conveying, or unwilling to agree, varied considerably. One character (number 5) provided that in such cases a jury

of twelve men should be summoned and sworn by a justice of the peace to ascertain the value of the land taken. Another (number 1) provided that the district judge, or two justices of the peace, were to issue warrants to the sheriff or marshal of the county to summon three dis-interested freeholders to arbitrate for the compensation to be awarded. In four charters (numbers 4, 12, 14, 15) the company and the landowners or their representatives are each to appoint an arbitrator, and these in turn to appoint a third, and then to proceed to estimate the value of the property taken or the amount of damages sustained., But if owners do not agree to arbitrate (not in number 4), the company may petition the circuit court, or the district or county court, for the appointment of these commissioners. The remaining charters provide for the appointment of three commissioners by some court or judge. In seven107 the appointment is to take place on the application of the railroad company; in one (number 22), on application of either dissatisfied party. One charter (number 3) provides for such appointment only in cases where owners are absentees or incapable of conveying their lands, “according

107 Nos. 1, 2, 11, 20, 21, 24, 25.

23 to act [of Congress] concerning right of way approved March 3, 1845.” (See foregoing page 16.)

In the remaining charters108 the three commissioners are to be appointed on a signed petition of the company, definitely stating what lands are to be taken, and after publishing the fact for a certain length of time. The commissioners appointed are to be from the county in which the property lies. In nearly all charters it is provided that in estimating the value of the land taken and the damages sustained, the advantages as well as disadvantages to the owners are to be taken into account; and some as a precaution and that in no case shall a balance be awarded the company.

108 Nos. 6, 7, 8, 9, 10, 13, 16, 17, 18, 19, 23, 26, 27.

Most of the charters provide, among the enumerated corporate rights, that the company may acquire, convey, and possess such real and personal property as may be necessary to carry on its business. The charters seem to imply that an effort shall first be made to acquire the right of way and other necessary lands by purchase or otherwise before resorting to expropriation. Number 21 is an exception.

Some charters state definitely that only an easement is acquired on expropriation. In one charter (number 3, section 7), however, there can be no doubt that the intention was to convey in fee simple. In another (number 21, section 13) the idea seems to be the same: “and whenever the amount of such award or judgment shall be tendered or deposited as aforesaid, an absolute estate in fee simple in such lands shall be and become vested in said company.” A third (number 5, section 10) provides that on expropriation and settlement the company shall have the “same right to take, own and possess said lands and material as fully and absolutely as if the same had been granted and conveyed to said company by deed.”

In other charters the wording is more indefinite. Number 7 (section 7) provides that “the said corporation shall upon payment to each party interested * * * * become invested and seized of the title of the lands or real estate * * * * and entitled to the full, free and perfect use and occupation of the same for the purposes aforesaid, which are, for all the objects of this act, hereby declared to be public purposes.” 24 Thirteen charters109 give free right of way through territorial or future state lands “to be held and possessed so long as the same shall be used for such purposes.” All but three of these (numbers 6, 19, 21) expressly exempt free right of way through school lands. Sections 16 and 36 of every township had been reserved for school purposes by the act of Congress organizing the territory. For right of way through these lands the company must pay not less than one dollar and twenty-five cents per acre as determined by the legislature, the proceeds going to the school fund.

109 Nos. 6, 7, 8, 9, 13, 16, 17, 18, 19, 21, 23, 26, 27.

Federal land grants figured largely in the hopes of the territory in securing railroads. The population and wealth of the territory did not warrant railroad construction on any large scale, and railroad systems were deemed to be essential to the development of the natural resources. One of the first charters (number 2, section 18) provided that the “fee simple of all lands granted along the said railroad or otherwise by the Congress of the United States, for the purpose of aiding said road, may be directly granted to said company and shall be vested in or transferred to said company.” Four other charters (numbers 12, 14, 15, 16) have like provisions. The charter granted to the Minnesota and Northwestern (number 16) makes the provision stronger. The future land grants “are hereby granted in fee simple, absolute and without any further act or deed.” Number 5 is authorized to “accept and hold to its use any grant, gift, loan or power of franchise, which may be granted to or conferred upon said company by the laws of any state or of the United States, or by any person or persons, upon such terms and conditions as may be imposed.”

The Minnesota and Pacific (number 21) was given a part of the federal land grant of 1857110 in its original charter. Three others (numbers 7, 8, and 11) by special enactments also received parts of this same grant. No mention of land grants had been made in their original charters. These grants were to accrue to the companies proportionately on the completion of every twenty miles of railroad.

110 11 U. S. Stats., 195.

Most of the charters provide for connecting, while many 25 provide for leasing, purchase, and reciprocal use at connecting points, or for consolidation. The charters do not indicate any general fear of monopoly. One of the last special charters granted (number 25) provides that the company “shall have the power to unite its railway with any other railway now constructed or which may hereafter be constructed in this territory or adjoining states or territories, upon such terms as are mutually satisfactory between the companies

connecting * * * and shall have the power to consolidate its stock with any other company or companies."

Six charters111 provided for "reciprocal use of said respective roads," where the roads connect; and in case of disagreement as to terms either party might appeal to the supreme court of the territory, "whose duty it shall be to fix such terms for the respective parties as may be equitable." Others simply provide for mutual agreement. Five charters112 authorized the consolidation of stock, change of name, and new joint board of directors not to exceed twenty-one in number. In some charters consolidation or connection with certain named companies is authorized.

111 Nos. 2. 1, 14, 15, 22, 27.

112 Nos. 12, 14, 15, 22, 27.

Only a few charters contain any provisions concerning tax provisions concerning taxation. Where no special mention or exemption was made, they would be taxed as other corporations on their capital stock and all their property both real and personal.113 A special form of taxation, however, grew up in connection with federal land grants in aid of railroads. The Illinois Central was paying seven per cent of its gross income into the state treasury. It was believed in Minnesota also that the territory ought to secure a "fair resulting interest" before she parted with the federal grants. They might "secure sufficient interest to pay all the taxes of the territory or future state, if that direction be advisable, for half a century or more to come."114 All that the charter of the Minnesota and Northwestern secured, however, was seven per cent of the net earnings to be paid in semiannually after the company cleared twenty per cent. If number

113 Council Journal, 1855, p. 126.

114 Council Journal, 1855, p. 36.

26 12 got land aid, the territory or future state was to have a “suitable resulting interest” in the lands and one per cent annually of the net proceeds of the road. Numbers 14, 15, and 16, simply provide for a “suitable resulting interest,” in proportion to the quantity of land granted and the length of the road in the territory or future state. Number 21, and enactments giving land grants to numbers 7, 8, and 11, provide that in consideration of grants, privileges and franchises granted, the companies shall pay three per cent of their gross earnings annually in lieu of all taxes and assessments whatever, and the lands granted are to be exempt from taxation till sold or conveyed.

Charters and enactments having provisions concerning federal lands grants usually provide for carrying United States mail and such freight and passengers as may be offered by the government. This was in accordance with conditions imposed in the federal land grant acts. Two charters (numbers 17 and 22) have such provisions though no promise is made of land grants.

Some charters provide for publicity of accounts. Numbers 6, 11, 20, and 24, demand that full and correct accounts of the financial condition of the companies be published annually. Number 6 provided that the charter would be null and void if this annual report were not made to the governor. The others had no provisions to enforce such publicity. With the land grant and gross income per centum enactments of 1857,115 provisions were made to secure the territory its dues. The governor, or other duly appointed person, was authorized to inspect the books and papers of the companies, and to examine their officers, agents and employees under oath to ascertain the truth of their accounts.

115 Laws of Minn., 1857, Ex. Ses., Ch. 1.

Powers granted to borrow money and issue bonds are very liberal. The minimum bond denomination is usually set at five hundred dollars. This was no doubt to insure against railroad bonds being issued and used as currency. Number 6 provides, as so many

charters of other states had done, that “no banking privileges are hereby granted said company.”

27

The first charter granted (number 1) authorized the company to borrow any amount of money not exceeding $200,000, and to issue bonds in convenient amounts not less than one hundred dollars each. Seven charters116 limit the bond issue to three-fourths of the whole amount actually expended on the “road and its appendages” at the time of its completion. Several charters authorize the companies to borrow on such terms and rates of interest as they can. Number 21 expressly provides “any law on the subject of usury in this territory or future state, or any state where such transaction may be made, to the contrary notwithstanding.”

116 Nos. 2, 10, 12, 14, 15, 16, 27.

All the charters, excepting numbers 12, 14, and 15, provided penalties for damaging and obstructing the railroads. If these provisions had all been carried out, similar offences would have been punishable in many different ways. To illustrate, if the damage were done to the Minnesota Western (number 2), the guilty person would be liable to treble the damages to be recovered in civil action; but if done to the Louisiana and Minnesota (number 3), chartered two days later, he must forfeit treble damages and is furthermore guilty of a misdemeanor, and on indictment and conviction is liable to a fine not exceeding $5,000, for the use of the county. If the damages were done to the Minnesota and Northwestern (number 6), he must pay treble damages to the company and “shall be imprisoned until payment thereof, unless sooner discharged by due proceedings of law;” he is further subject to indictment, and may be fined from $30 to $1,000, “to the use of the territory or future state,” or may be “imprisoned in the penitentiary or jail for a term not exceeding five years,” in the discretion of the court. The St. Paul and Taylor's Falls charter (number 19) provides for double damages to be paid to the company; the offender is furthermore guilty of a misdemeanor and on conviction must serve from five to ten years

in the territorial prison, and in case of death resulting from his misdeed he is to be held guilty of murder in the second degree. These are a few of the many different provisions. This great discrepancy is due almost entirely to the use of different models in drawing up the charters.

28

There are time limits set in all the charters. The time for beginning work ranges from two to five years. Number 9 sets the time at ten years, but from the context this must be a misprint. Five charters117 provide for completion in ten years. Most of them provide for the building of certain of the more important parts within a specified time. Two companies (numbers 2 and 10) are permitted to build their roads in sections. Some of the charters provide that the grants and franchises are null and void if the companies do not comply with the time requirements. Number 13 provides that a failure to comply with any of the requirements of that charter shall forfeit all the charter rights and privileges. Similarly numbers 12, 14, and 15, make compliance with all terms and conditions, the conditions of the charter remaining in force “for the full term of fifty years.” These are the only companies whose charters are not perpetual, and this provision is not found in the models from which they were drawn up. In 1853 we find that the committee on internal improvements recommended that the charter privileges asked for the Mississippi and Lake Superior (number 4) be granted for the period of fifty years,118 but this recommendation was not acted upon. In a message to the legislature in 1855 the governor said: “The modern doctrine is now well understood among public men, that no corporation for the concentration of large capital should have perpetual and unalterable charters, and in most New England states this guard is reserved to the people as it rightfully ought to be.” The three charters out of the seven granted the following year were thus limited.

117 Nos. 4, 5, 9, 20, 21.

118 Council Journal, 1853, p. 43.

Fourteen charters119 provide for amendment. The charters granted in 1853 provide that the legislature may alter or amend, or alter, amend or repeal. Number 7 provides that any subsequent legislature may amend “in any manner.” The Transit (number 8) is the first one that provides that the amendment is not to “destroy or impair vested rights,” and this provision is found in all charters following that make any mention of amendment at all.

119 Nos. 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 19, 25, 26 27.

The house amended the bill to charter the Transit Railroad Company by striking out this clause,120 but the council did not concur and the provision remained. Number 6 made no mention of amendment, but in the amendment to this charter the following year it was specified that the “legislature may repeal, amend or modify, after the expiration of twenty years, provided that compensation be made said company for all damages sustained thereby.”

120 House Journal, 1855, p. 297.

A number of the charters contain general provisions. In the Minnesota and Pacific charter (number 21) section 27 establishes a uniform gauge of four feet eight and a half inches for all railroads in the territory. In the Minnesota and Northwestern it was provided that if the charters were not accepted by the named incorporators any other company approved by the governor and treasurer of the territory might accept and be vested with their rights and subject to the liabilities set forth in the charter. In a rider to number 7 a county is organized and its government provided for and the county seat of another county is fixed. Reciprocal rights with connecting roads are provided for in some charters.

Fifteen121 of the charters provide that “this act is hereby declared to be a public act.” It is a question whether this was done consciously to secure the right to amend. It was most likely done merely in imitation of railroad charters of other states. Though declared

a “public act,” the Louisiana and Minnesota charter (number 3) is found with the other railroad charters, not so declared, among the private acts in the collated statutes of Minnesota, 1853.

121 Nos. 3, 6, 7, 8, 9, 10, 11, 13, 19, 21, 22, 23, 25, 26, 27.

The charters were all very liberal to the corporations, as the earlier charters of other states had been. The later experience of neighboring states, though at times made use of, was not thoroughly incorporated into the charters. Many restrictive provisions are found, but the means of enforcing them are generally quite wanting. Railroad problems were not understood in advance of actual experience.

30

CHAPTER III THE RAILROAD BOND ISSUE AND THE GENERAL RAILROAD INCORPORATION LAW OF 1858.

After the treaties of 1851 with the Indians at Traverse des Sioux and Mendota, which were ratified later by the Senate and were proclaimed by President Fillmore in 1853, the territory west of the Mississippi was thrown open to settlement, and the population of the territory increased by leaps and bounds. Prior to 1855 only a little over half a million acres of public land had been sold in Minnesota. In 1855 over a million acres were transferred to settlers, and in 1856 nearly two and a half million acres.122

122 Parker, Handbook for Minnesota, 1856–7, p. 112.

Only a relatively small area was under cultivation; but the territorial newspapers and the prospectuses, handbooks and other literature scattered broadcast at the time, picture the agricultural possibilities in the most glowing terms. Lumbering was one of the chief industries and the rivers began to teem with logs. Villages sprang up as if by magic, often in anticipation of rural settlement and of industrial and commercial enterprise. Sawmills were run to their full capacity, frequently night and day, to supply the enormous demand

for building materials. Land offices, hotels, and livery stables, did a flourishing business everywhere.

Speculation was rife on all sides. Unimproved lands, bought for one dollar and a quarter an acre in the winter of 1856, were surveyed and city lost recorded. In 1857 many of these lots were sold to eager buyers at fifty dollars an acre, even though there was not even a log cabin in sight.123 Such paper towns were at time laid out within a mile of each other. In older settlements city lots bought for five hundred dollars in the morning might sell for a thousand in the afternoon of the same day.124 The value of corner lots, factory sites, and water power privileges, was largely speculative, depending

123 Department of Agriculture, Report, 1863,p. 36; Letter of O. H. Kelley, Itasca.

124 Parker, Minn. Handbook for 1856–7, p. 20; one such sale in Red Wing described.

31 to a great extent on the final location of the proposed railroads. Property values in general were abnormally high.

These “wild riots of financial adventure” came to an abrupt close. The Ohio Life Insurance and Trust Company of New York failed before the Minnesota constitutional convention adjourned. Other large eastern corporations followed suit, and the panic of 1857 was precipitated. When the news reached Minnesota, cash and credit disappeared, and likewise thousands of speculators who had been caught unawares. Paper city lots lost their charms, land agencies closed their doors, factories and mills soon came to a standstill. For a time it seemed as though the tide of immigration had turned, and that Minnesota was about to be depopulated. The taxable property of the state had increased one hundred and two per cent in 1857. In the two following years there was an actual decrease of about thirty per cent in valuation.125 The following table shows the number and area of town plats recorded from 1853 to 1859 in eighteen counties with forty-seven per cent of the population of the state:

125 Commissioner of Statistics, Minn., First annual report, for the year ending Jan. 1, 1860, p. 147.

No. of town sites. No. of lots. No. of acres. 1853 3 1,567 657 1854 30 8,354 2,719 1855 44 20,944 5,196 1856 107 39,683 13,966 1857 182 90,584 20,855 1858 50 18,076 4,689 1859 12 4,932 1,462

The state commissioner of statistics, in his report for the year ending January 1, 1860, estimated the total area occupied by town lots at over 100,000 acres, or twenty-two per cent of the cultivated area of the state. Of the estimated 374,000 city lots, 362,000 were unoccupied and unimproved.126 Judging from the decrease in the number of votes cast, and from reports of a number of towns and cities, the commissioner concluded that the urban population had decreased twenty per cent since 1857. St. Paul, the capital and largest city, is said to have lost half its population during the panic. This population was in the main transferred to agricultural pursuits,

126 Ibid., pp. 148–9.

32 and as a consequence the cultivated area was more than doubled in 1858 and in some counties more than quadrupled, while the population of the state as a whole increased only 6,000 as compared with an increase of about 50,000 in the previous year.

Prior to 1857 agriculture had not been materially developed in Minnesota. Speculation in city lots had proved more fascinating than wheat raising. Many of those who had tried farming had not met with the best of success. The army worm paid a visit in 1855, and grasshopper raids followed in 1856 and 1857.127 When the panic and hard times came, the farmer suffered with the rest.

127 Department of Agriculture, Report for 1863, p. 36, letter by O. H. Kelley.

On receiving the federal land grants, Minnesota had felt assured of railroads in the immediate future; but the panic nipped the promising railroad construction in the bud, and the people began to fear that the land grants would eventually revert to the government on

account of the inability of the railroad companies to meet the time requirements specified in the grants.

When the legislature convened in December, 1857, it immediately set about to devise some plan whereby it might relieve the financial situation and help the railroads. It was hampered by the constitutional provision forbidding the gift or loan of state credit to any individual association or corporation.128 Accordingly a constitutional amendment was proposed129 which authorized the issue of state bonds to the extent of $1,250,000 to each of the four land grant railroad companies. The bonds were to be issued and delivered at the rate of $100,000 for every ten miles of road ready for superstructure and another $100,000 for every ten miles “actually completed and cars running thereon.”

128 Const. of Minn., Art. IX, sec. 10.

129 General Laws of Minn., 1858, ch. 1.

The railroads were to pay the interest on the state bonds and all expenses connected with their issue. The net profits of the companies were pledged for the payment of the interest. The first two hundred and forty sections of land accruing to 33 each company were to be placed by deed trust at the disposal of the governor and secretary of state. As further security the railroads were to give first mortgage bonds on their roads, lands, and franchises, to the full value of the bonds received from the state. Each railroad company was placed under obligation to complete fifty miles of its road before the close of the year 1861, one hundred miles by the close of 1864, and four-fifths of its road by 1886.

The constitution made necessary the enactment of several general incorporation laws, for the incorporation of some kinds of corporations was not provided for in the general incorporation laws in force at the time.130 Accordingly the legislature passed a number of new incorporation laws,131 among them “An act to provide for the incorporation and regulation of railroad companies.”132

130 Statutes of Minn., 1851, chs. 36–42, incl.

131 See Statutes of Minn., 1849–1858, ch. XVII, pp. 274–337; Corporations, their formation and regulation.

132 General Laws of Minn., 1858, ch. 70.

The law is almost verbatim like that enacted in Ohio in 1852.133 Its provisions in the main do not differ materially from those found in various special charters of the time, but the fact that all future railroad companies were to be subject to the same laws was in itself a decided step in advance; for the evident inconsistency and unnecessary confusion, if not actual injustice, of incorporating similar companies under different laws would be done away with.

133 Laws of Ohio, Vol. 50, p. 274; Act approved May 1, 1852.

According to the new law any number of persons not less than five might incorporate a railroad company by filing with the secretary of state as sworn certified statement specifying the name of the company, the name and residence of each of the persons forming the association, the termini of the proposed road and the county or counties through which it would pass, and lastly the amount of capital necessary to construct the road.134

134 General Laws of Minn., 1858, ch. 70, sec. 1.

The state attempted no direct control of stock issue. Though limited in the first instance to the amount of capital 3 34 declared necessary for the construction of the road, the amount of capital stock might later be increased by the directors if they deemed it necessary and secured the consent of a majority of the stock already issued.135 The borrowing power of the railroad company was limited to an amount not exceeding its authorized capital

stock. The bonds and promissory notes issued might be secured by pledging property and income, but were not to bear more than eight per cent interest.136

135 Ibid., sec. 7.

136 Ibid., sec. 13.

Railroad companies were permitted to consolidate whenever any portion of their lines was so constructed as to admit of continuous passage. One railroad company might aid other companies in bringing about such connection by subscription of capital stock or otherwise and was authorized, after connection had been made, to buy or lease these lines, or to make such “arrangements for their common benefit” as might be agreed upon.137 There was no mention made of parallel and competing lines, of which so much is heard later.

137 Ibid., sec. 24.

Every railroad company incorporated under the new law was required to make a full annual report to the state auditor. This report was to give the amount of capital stock of the company, the gross receipts for the year, the cost of repairs and incidental expenses, the net amount of profits and the dividends made, with such other facts as might be necessary to show the condition of its affairs. The auditor was to transmit an abstract of such reports to the legislature.138 No authority was given, however, to investigate the accuracy of the reports, and no penalties were provided for in case the companies neglected or refused to report.

138 Ibid., sec. 18.

The most interesting feature of the law from the point of view of state regulation is the fixing of maximum rates of freight and fare. No railroad incorporated under the law was permitted to demand or receive for the transportation of passengers more than three cents per mile, nor more than five cents per ton-mile for the transportation of property

when transported thirty miles or more, but if transported less than 35 thirty miles such reasonable rates might be charged as were fixed by the company or prescribed by law.139

139 Ibid., sec. 12. (Verbatim from the Ohio Law, sec. 13.)

The special charters had nearly all given over to the companies the right to fix their own rates, but the state legislature of 1858, in following the lead of Ohio, asserted its right to regulate rates on roads thereafter incorporated. In the general incorporation act for plank road and turnpike companies enacted in 1851, the legislature had expressly reserved its right to regulate the rates of toll.140 This law was still in force and the same principle was now applied to railroads.

140 Statutes of Minn., 1851, ch. 39, sec. 55.

But though the legislature fixed maximum rates of charges, it provided no means for the enforcement of the law, and attached no penalties for its violation. The companies were evidently supposed to comply with this and other requirements of their own free will.

The legislature of 1858 had planned, by its proposed amendment to the constitution approved by the governor March 9, to expedite the construction of railroads, save the land grants, and secure a safe currency for the people.141 The electors ratified the amendment by an “overwhelming majority of votes” the following April.142

141 House Journal, 1859–60, p. 389 ff.; Report of a special committee on railroads, railroad grants, and Minnesota railroad bonds. General laws, 1858, chs. 32 and 33; Banking act and an amendment to the same.

142 Ibid., p. 15.

But this specious financial scheme proved a dismal failure in every way. The railroad companies did not proceed according to the spirit of the amendment. They refused to give exclusive first mortgage to the state, and won out against the governor in the courts.143

On the other hand the people never regarded the bonds as state obligations at all. Sixty-seven members of the legislature, who had voted for the bond issue, publicly pledged themselves never to vote for a tax to pay them. The bonds, which at first were eagerly bought at par, could not be disposed of at any reasonable price despite the best efforts of the governor and of the companies.144

143 2 Minn., 13; application of Minn. and Pac. for a mandamus against Governor Sibley upheld.

144 House Journal, 1859–60, p. 15; Governor's Message.

For a while the work of the construction companies was carried on with rapidity, if not thoroughness, and a great number of bonds were issued according to the agreement, which was construed liberally for the railroad companies. These bonds were sold and hypothecated at a ruinous discount, mostly, it was believed, to speculators. Before long construction operations had to cease for lack of funds. The companies had no capital or credit of their own and had depended almost entirely on the proceeds from the state bonds. When the railroads realized their mistake, they offered to submit to the conditions originally imposed by the governor, namely, to issue exclusive first mortgage bonds to the state,145 but their submission came too late. They were by this time entirely discredited.146

145 Tenth Census Report, Vol. VII, pp. 632–634, gives an account of Minnesota's bonded debt.

146 House Journal, 1859–60, p. 15.

In all, $2,275,000 in bonds were issued. All that could be shown for this large sum was two hundred and forty miles of “incomplete, fragmentary and disjointed portions of grading,”

which had cost on the average less than $3,000 per mile. Only fifty miles of well-built superstructure was ready for the rail.147

147 House Journal, 1859–60, p. 390; Report of the concurrent committees on railroads, railroad grants, and Minn. railroad bonds.

When the legislature met in December, 1859, Governor Ramsey in his message admitted the folly of attempting to loan the state credit to the land grant railroad companies. He recommended their dispossession and the transfer of their interests to more responsible hands. He counselled strongly against any form of repudiation, but recommended that, since the outstanding bonds could at the time be secured on favorable terms, they ought to be bought in and withdrawn immediately and new bonds issued instead.

The legislature could hardly be expected to follow this last recommendation. Its members reflected the sentiment prevalent throughout the state. The great majority of the people absolutely disowned the “swindling bonds,” as they were called, and claimed that those who held the bonds had bought 37 them on speculation at a large discount, fully realizing the risk they were taking.

A joint committee on railroads, railroad grants, and Minnesota railroad bonds, was appointed. This committee conducted an extensive investigation of the controverted question and made several reports. Heated discussions were carried on in both Houses, but it proved hard to come to any satisfactory conclusion.

Early in the session the governor was directed by a joint resolution to destroy the blank and unissued Minnesota state railroad bonds in the presence of a joint legislative committee.148 They would at any rate make sure that no more were issued.

148 General Laws, 1860, p. 303; Joint Resolutions, No. 4, approved Jan. 13.

The railroad companies having defaulted in the payment of interest on the bonds issued by them and held by the state, it was the duty of the governor to foreclose the deeds of trust held for the state.149 This the retiring governor had not done. By an act passed toward the close of the session, it was made the duty of the governor to foreclose the deeds of trust if in his opinion the public interest required it. He was furthermore authorized at his discretion to bid in for the state the property, rights, and franchises of the companies at such sale.150

149 Cf. General Laws, 1860, ch. 88, sec. 1, with General Laws of 1858, ch. 1, sec. 1, p. 11.

150 General Laws, 1860, ch. 88, approved March 6.

A few days later two amendments to the constitution were proposed by a concurrent resolution.151 According to the first no law levying a tax or making other provision for the payment of interest or principal of the Minnesota state railroad bonds was to be effective before ratified by a majority vote of the electors of the state. The second amendment forbade the further issue of bonds under what “purports to be an amendment to section ten of article nine of the constitution,” and expunged this amendment from the constitution, reserving to the state, nevertheless, all rights, remedies, and forfeitures accruing under it.

151 Ibid., p. 297; Concurrent Resolution, No. 1, approved March 10.

This resolution secured the approval of Governor Ramsey 38 and at the following November election the amendments were ratified by an almost unanimous vote of the electors. The people believed the state had been hoodwinked by designing politicians and railroad men in the first instance, and they construed proposals of settlement or adjustment as indications of further corruption. If refusing to acknowledge the validity of these state bonds was repudiation, they were quite willing to bear the odium. They rather looked upon such repudiation as a vindication of their honor.

CHAPTER IV. THE EVENTUAL ADJUSTMENT OF THE STATE RAILROAD BONDS.

The people of the state would gladly have consigned the repudiated Minnesota State Railroad Bonds to oblivion, but those who held the bonds were not so ready to forget. Bonds with a par value of $2,275,000152 and their coupons attached were not to be given up without a struggle. The state not being suable, the case had to be fought out with the legislature and with the people who had voted the repudiation.

152

Railroad Company. Bonds issued. Amount of grading. Minn. and Pac., $600,000 62 mi., 3,213 ft. Mpls. and Cedar Valley, 600,000 69 ¼ mi. Transit, 500,000 50 mi. Southern Minn., 575,000 Minn. Valley, 37 ½ mi.; Root R. Branch, 20 mi., 1,004 ft.

Nothing was done by the legislature before 1866, when it passed an “act for the equitable adjustment of the state railroad bonds.” This act provided for the appointment by the governor of a committee of three to investigate who the holders of the railroad bonds were and what the bona fide holders had paid. They were authorized to receive bids, and all claims not presented before January 1, 1867, were to be forever barred.153 This attempt at securing an equitable adjustment proved futile.

153 General Laws, 1866, ch. 5, p. 9.

Early in 1866 it was discovered that Minnesota had a claim to 500,000 acres of internal improvement lands under an act of Congress approved September 4, 1841.154 These lands were

154 5 U. S. Stat., 453, ch. 16, sec. 8.

39 to have accrued to the state on her admission into the Union in 1858, but, perhaps on account of the large land grants of 1857, the older general grant was overlooked. When Governor Marshall had his attention called to this claim by Mr. Drake, later president of the

St. Paul and Sioux City railroad company, he immediately had the matter investigated, with the result that the Secretary of the Interior conceded the claim to the state.155

155 Exec. docs., 1866, p. 18; 1867, p. 23.

The governor now thought that he saw a practicable solution to the state bond difficulties. The bonds had been issued to secure internal improvements; these lands were given to the state for this same purpose. He therefore believed that the lands might properly be given to settle the outstanding bonds. In this way the stigma of repudiation could be removed from the state without subjecting the people to taxation. He brings out these points strongly in his message to the legislature in 1867, and appeals to their sense of honor and their state pride. He assumes that the people generally believe something is due on the bonds and that they intend to pay whatever is justly due. He suggests two ways of disposing of the lands with this object in view. Either the proceeds of this sale may be set apart as a sinking fund to pay whatever ultimately is due to the bondholders, or the bondholders may be given the lands in exchange for their bonds.156

156 Ibid., 1866, pp. 18–20; Governor's Message, Jan. 10, 1867.

The legislature followed the recommendation of the governor. It passed an act providing that the proceeds to the state from the federal land grant of 1841 and the gross income percentage paid in by the railroads after the passage of this act were to be set aside as a sinking fund for the adjustment of the Minnesota State Railroad Bonds.157 Certain judgments recovered in the district court of Ramsey county against the Minneapolis and Cedar Valley railroad company for construction work were recognized by the legislature and placed for payment on the same footing with its state railroad bonds.158

157 General Laws, 1867, ch. 53.

158 Special Laws, 1867, ch. 152.

The people, however, were not yet ready for any such settlement; 40 and when the act was submitted to the electors, according to the constitutional amendment of 1860, it was rejected by a vote of 49,763 to 1,935.159

159 A. J. Edgerton, Compilation of the railroad laws of Minn. (1872), p. 43, footnote.

When the next legislature met in 1868 Governor Marshall's position was unchanged, but the legislature was not prepared to take any definite action in view of the recent second repudiation by the people.160 The people had no intention of paying the “swindling bonds of '58,” and suspected those who worked for an adjustment of collusion with the bondholders. The committee appointed by the governor the previous year reported to the legislature the results of its investigations. According to this report the holder of the largest amount of railroad bonds was Mr. Selah Chamberlain, a railroad contractor. He claimed that his bonds had cost him above par in work and material furnished. The committee had employed an experienced engineer to examine the work done, and he reported that the grading had only cost $2,843.42 per mile, instead of $9,500 as alleged by Mr. Chamberlain. Some holders had admitted paying as low as seventeen and a half cents on the dollar for their bonds. The report of this committee naturally confirmed the people of the state in their belief that they were not dealing with honest creditors with just claims.161

160 Red Wing Argus, Jan. 23, 1868.

161 Folwell, Minnesota, p. 327.

An amendment to the constitution was proposed by the legislature, providing that no law disposing of the internal improvement lands or of the proceeds from them was to be operative until it had been ratified by a majority vote of the electors. The legislature, however, might, without such vote, provide for the appraisal and sale of the lands and the investment of the proceeds in state or national securities.162 If this amendment were ratified, what would prevent the legislature from investing such proceeds in Minnesota

state railroad bonds? The people refused to take any such chances and the amendment was lost.163

162 General laws, 1868, ch. 108.

163 Edgerton, op. cit., p. 44.

In 1869 Governor Marshall sent a special message to the 41 legislature, in which he discussed the Minnesota State Railroad Bonds at length and urged the wisdom and propriety of meeting an obligation which would have to be met sooner or later. A number of memorials from aggrieved bondholders were presented to the legislature. These demanded settlement on various pleas. One stated that he, a resident of New York, had been induced by the governor of Minnesota personally to purchase the bonds held by him.164 Several New York bankers claimed to be innocent holders and demanded the protection of the state against the acts of her own officers appointed by herself.165 Another memorial was presented by an executor in New York in behalf of a deecased bondholder's widow and orphans.166

164 The St. Paul Daily Press, Feb. 2, 1869, p. 2; Memorial of J. D. Souter, New York, Jan. 13, 1869.

165 Ibid., memorial addressed to the governor and dated Jan. 19, 1869.

166 Ibid., dated Jan. 25, 1869.

The state press was in favor of Governor Marshall's recommendation. The St. Paul Press claimed that only two newspapers in the state opposed him.167 The legislature proceeded to enact what became known as the Delano bill. This bill gave Mr. Delano thirteen years in which to buy up the disputed bonds at practically his own price, in return for which he was to receive the entire internal improvement land grant. He was in no way made responsible

for carrying out his trust, nor for the manner in which it was done.168 This measure was not at all satisfactory to the governor and he promptly vetoed it.

167 Ibid., Feb. 9, 1869. The papers referred to are the Hastings Gazette and St. Cloud Journal.

168 Ibid., March 11, 1869, p. 1, and the bill given in full, pp. 2 and 3–5.

In 1870 the legislature passed another bill to bring about a settlement. This bill provided for the surrender of all outstanding railroad bonds with attached coupons in exchange at par value, but with no interest allowed, for internal improvement lands at prices to be determined at public auction in St. Paul the following September. The lands were to be exempt from taxation for a period of ten years, but the minimum price was fixed at $8.70 per acre,169 which was several

169 General laws, 1870, ch. 13, p. 18.

42 times the market value of unimproved land in those regions. This act was signed by the governor, and was approved by the people at a special election held the following May; but the bondholders did not wish for settlement on these terms, and the required number of bonds were not deposited for the act to become operative.

In his message to the legislature in 1871, Governor Marshall again urged the use of the internal improvement lands “to save the honor of the state and save the people from taxation.”170 Other plans, however, were more interesting to the legislature at this time. Railroad companies had long looked with longing eyes on this desirable land grant, and the people in frontier settlements were clamoring for its distribution in aid of new railroad projects. The Sauk Rapids Sentinel expressed the sentiments of many when it said: “We sincerely hope our legislature will this winter finally dispose of these lands and thereby get rid of a matter which has become almost as annoying and vexatious as the bonded debt

itself. Divide up the land, gentlemen, as quickly as possible, but don't forget to give us a share up this way.”171

170 Minn. Exec. Docs., 1870, p. 7.

171 Sauk Rapids Sentinel, Jan. 27, 1871.

A number of such division schemes were proposed and met with no particular objection in the press. After much log-rolling and lobbying, a bill was finally passed which divided all the lands among several railroad companies. The bill in its final form was rushed through without a hitch and received the support of men of both political parties. The fate of the internal improvement lands seemed settled, when the unexpected happened, the governor vetoed the bill. He gave as his reasons that the bill did not have the free and voluntary consent of the majority of both Houses of the legislature, and that they were not authorized to dispose of the lands in this manner.

The veto came as a surprise to the members of the legislature as well as to the people. It met with various receptions in different parts of the state. Rochester, though in the anti-monopoly storm center, felt keenly disappointed. The Federal Union, a Rochester paper, said: “This is sad news, and it will 43 tend to retard greatly the prosperity of this portion of the state. This is confirmed by the St. Paul papers.”172 The Rochester Post commented: “St. Peter glorified and jollified over Governor Austin's veto of the land division bill with bonfires, cannon firing, and band playing. Rochester did none of these things. St. Peter was not a point in the land divide. Rochester was a point in the land divide. This makes a great difference between St. Peter and Rochester.”173 In an editorial of the same issue, however, was stated: “While we in this vicinity, as residents of a locality which the bill proposed to benefit, may regret the loss of the new roads which were promised through its operation, we cannot but respect the governor for his action.”

172 Federal Union, March 11, 1871.

173 Rochester Post, March 11, 1871.

On the whole, Governor Austin received the hearty support of the press, and he gained the respect of the people for his high motives and fearless action.174 Politicians and those personally interested in the “land grab” swore vengeance and tried to bring about his political destruction. These virulent attacks were promptly met in the courts and the governor was vindicated. The Republican state central committee issued a circular in defence of the governor, and characterized the work of his enemies as an iniquitous conspiracy against the people of Minnesota.175 The people had faith in Governor Austin, and there was from this time, as Professor Folwell says, no question of his re-election, should he desire it.176

174 Ibid., March 11, 1871 (editorial); St. Paul Dispatch, March 14, 1871; New York Times editorial quoted in St. Paul Dispatch, March 14, 1871.

175 Published in Minneapolis Tribune, Nov. 3, 1871, and elsewhere.

176 Folwell, Minnesota, p. 269.

The internal improvement lands continued to weight heavily on the hands of the state, and the governor, fearing with good reason that they might be misapplied, recommended to the legislature of 1872 that they be sold in the same manner that school lands were, and that the proceeds be held as an internal improvement fund subject only to the vote of the people.177 The legislature accordingly proposed this as an amendment to the state constitution, providing further that the proceeds

177 Exec. Docs., 1871, Governor's Message, Jan., 1872.

44 from these land sales were to be invested in United States bonds or in Minnesota State bonds issued since 1860.178 This constitutional amendment, which was ratified at the next general election,179 made any adjustment of the railroad bonds in the near future highly improbable. The people would not submit to taxation to pay the repudiated bonds,

nor were they very likely to vote for the application of the internal improvement fund to this purpose.

178 General laws, 1872, ch. 14.

179 Exec. Docs., 1872, Governor's Message, Jan., 1873.

The bondholders were unable to pursue any remedies at law against the state on her bonds, and when it became apparent that no legislative relief was forthcoming, Mr. Chamberlain, who held state railroad bonds amounting to over half a million dollars, which he had received for construction work from the Southern Minnesota, brought suit against its successors, the St. Paul and Sioux City and the Southern Minnesota railroad companies, seeking to charge with the payment of the bonds the two hundred and forty sections mortgaged by the original company under the amendment of 1858 and purchased by the state under the foreclosure of this mortgage and now held by the defendant railroad companies. He contended that the position of the state in relation to the bonds was simply that of a surety, the principal debtor being the original Southern Minnesota railroad company, whose president had endorsed and transferred to him the bonds, and that therefore the conveyance by that company of its land grant to the state to indemnify the state created a trust in favor of the holder of the bonds. His claims were not sustained in the federal circuit court, and the supreme court likewise in its October session in 1875 held that the bondholders had no equity for the application of the land to payment of their bonds.180 As to the validity of the bonds themselves, Justice Field in his statement of the case said: “The bonds issued are legal obligations. The state is bound by every consideration of honor and good faith to pay them. Were she amenable to the tribunals of the country as private individuals are, no court of justice

180 92 Otto, 299, Chamberlain v. St. Paul and Sioux City Railroad Company et al.

45 would withhold its judgment against her in an action for their enforcement.”181

181 Ibid., p. 304.

The supreme court had earlier in the same session reviewed the claims of Mr. Farnsworth and others against the St. Paul and Pacific for the payment of bonds issued by its defaulted predecessor, the Minnesota and Pacific.182 It was held that the original company had forfeited its franchises and all interest in the land grant, and that its successor had secured title free from any lien. The right of the state to foreclose the trust-deeds was sustained, but *obiter dicta* it was said that the adoption of the constitutional amendment of November, 1860, certainly had the effect to impair the value of the bonds of the state, and that the holders of the bonds were injuriously affected by the amendment.183 Such statements, coming from the highest judicial tribunal of the nation, were far from gratifying to those who took a pride in the good name of the state of Minnesota.

182 92 Otto, 49, Farnsworth et al., trustees, v. Minnesota and Pacific Railroad Company et al.

183 Ibid., p. 71.

Governor Davis, in his parting message to the legislature in January, 1876, discussed at length the history of the bonds and the moral obligations of the state, and strongly recommended the appointment of an impartial commission to adjust the claims.184 Governor Pillsbury, in his inaugural address to the same legislature, likewise devoted much time to the same question.185 He believed that the bond issue was premature and unwise, but since the state had in 1860 obtained by fore-closure the security for the bonds, he thought it evinced a childish, ignoble disposition to repudiate the results of an act of folly deliberately committed by themselves. The earnest pleas for the vindication of the honor of the state were of little avail, except to keep up the agitation in the legislature and throughout the state.

184 Exec., Docs., 1875, vol. I, p. 35 ff.; Gov. Davis' message, Jan., 1876.

185 Ibid., Inaugural address of Gov. Pillsbury, Jan., 1876.

The next year Governor Pillsbury again took up the question for discussion in his message and affirmed the validity of 46 the “dishonored bonds” in no uncertain language.186 This year the legislature passed an act constituting the governor, the secretary of state, and the attorney general, commissioners of the public debt of Minnesota. These commissioners were authorized to prepare Minnesota six per cent thirty-year bonds, redeemable after twenty years, and to issue these at the rate of $1,750 for each outstanding state railroad bond with coupons attached. The judgments against the Minneapolis and Cedar Valley railroad company for construction work, which the legislature in 1867 had recognized,187 were to be liquidated as though state railroad bonds had been issued.188 This act was passed in pursuance to an understanding with Mr. Chamberlain and other bondholders, and was considered equitable by them.189 An amendment to the state constitution was proposed, which was to authorize the legislature at its discretion to apply the internal improvement lands and the proceeds from them to the redemption of the principal of the bonds that might be issued in settlement of the Minnesota state railroad bonds.190 When these measures came before the electors of the state they were rejected by a large majority. The time for adjustment had not yet come.

186 Exec. docs., 1876, Governor's message, Jan., 1877.

187 Special laws, 1867, ch. 152.

188 General laws 1877, ch. 92, sec. 6.

189 Ibid., introduction to enactment.

190 General laws, 1877, ch. 5; proposed amend. to Art. IV, sec. 32, B.

The governor in his next message deplored the rejection of what he believed to be liberal terms which the bondholders had offered, and again made his recommendations under the heading, “Dishonored Bonds.” The legislature at this session (1878) proposed to exchange the internal improvement lands for the “outstanding documents known as the Minnesota state railroad bonds, the validity of which the people of Minnesota do not recognize, but which it is desirable to be recovered and destroyed.”191 All bondholders depositing their bonds before the first Monday in July, 1879, were to have, as far as possible, an equal chance. The choice of land was to be given in the order of the deposit of the bonds after that date.192

191 General laws, 1878, ch. 85; introduction to enactment.

192 Ibid., ch. 85.

47 This measure fared no better at the polls than did those of the year before.

Governor Pillsbury continued his pleas for the vindication of the honor of the state and for the redemption of the “dishonored bonds” in his messages to the legislatures in 1879 and 1881, the sessions at this time having been made biennial. The bondholders were getting impatient, and Mr. Chamberlain and others again proposed a compromise. It was realized that no settlement could be made which the people would accept. In 1881 the legislature authorized and required the judges of the state supreme court to determine the constitutionality of issuing bonds to settle the vexatious claims without submitting the question to the vote of the people as required by the amendment of 1860. In case any of the judges of the supreme court did not qualify to serve, the governor was authorized to appoint district judges to fill such vacancies. If this tribunal decided that submission to the people was not necessary, new bonds were to be issued immediately to pay fifty per cent of the principal and interest of all outstanding claims, connected with the defaulting land grant companies in which the state had an interest; otherwise the act was to be submitted to the electors. The governor, auditor, and attorney general, were designated a board of commissioners to carry out the provisions of the act.193 Another act was passed,

providing that the proceeds from the internal improvement lands were to be applied to the payment of interest on the proposed Minnesota state adjustment bonds and to form a sinking fund for their payment at maturity. According to the constitutional amendment of 1873, this act was to be submitted to the vote of the electors.194

193 General laws, 1874, ch. 104.

194 92 Otto, 49 and 299.

The judges of the supreme court refused to serve, and the governor accordingly appointed five district judges to constitute the tribunal. A writ of prohibition was served upon them, and when the case came before the supreme court the attorney general argued that the legislature did not have the authority to set up this tribunal, and that the act was repugnant 48 to the amendment of 1860. The supreme court decided195 that the amendment of 1860 was repugnant to the constitution of the United States, because it “impaired the obligation of contracts,”194 and further, that the act of the legislature delegating legislative power to state judges was also void. The federal supreme court had already expressed itself, *obiter dicta* , to the same effect194 and the case was not appealed.

195 29 Minn., 474; State v.s Young, decided September 9, 1881.

The “dishonored bonds” could now be redeemed without the support of a popular vote. Governor Pillsbury immediately called an extra legislative session in October, 1881. An act was passed providing for the issue of Minnesota state adjustment bonds which were to replace the former bonds and claims at fifty cents on the dollar, as had been agreed to by the claimants.196 An internal improvement land fund bill was passed, which was virtually that of the previous regular session re-enacted.197 The title was changed from “An act for the adjustment of Minnesota state railroad bonds” to “An act providing for the adjustment of certain alleged claims against the state.” This change was perhaps intended to make it more palatable to the people when they came to vote on its adoption. The act was submitted to the electors and was ratified. The issue of adjustment bonds having been

voted by the legislature, they chose to meet the obligations of these new bonds with the proceeds of the internal improvement lands rather than submit to taxation.

196 General laws, 1881, special session, ch. 1.

197 Ibid., ch. 71.

The adjustment bonds were to be prepared by the governor and auditor and dated January 1, 1881. They were thirty-year bonds bearing five per cent interest after January 1, 1884, and were payable at the option of the state after ten years. The state, however, reserved the right to pay cash on selling the bonds if it could secure money at less than five per cent interest.198

198 General laws, 1881, special session, ch. 1, sec. 2.

A writ of injunction was served upon the governor, restraining him from signing or issuing the adjustment bonds. He disregarded the writ, however, and the bonds were duly 49 signed, countersigned, and delivered. When the state treasurer, Mr. Kittelson, was about to pay interest on the new bonds, an action was brought in the Hennepin County district court to restrain him from doing so, on the ground that the constitutional amendment of 1858 authorizing the issue of the original state railroad bonds was void, that the act of 1881 authorizing the issue of the new bonds was void, and, further, that the new bonds had been signed and issued in violation of a writ of injunction. The district court denied the petition and was sustained by the supreme court, which decided against the plaintiff on all points.199

199 29 Minn., 555; Secombe vs. Kittelson. (Full account of facts given.)

No further legal difficulty was encountered. The credit of the state was good, and by November 30, 1882, new bonds at four and a half per cent could be issued to retire the

adjustment bonds.200 After a long struggle and much difficulty, adjustment was thus finally substituted for repudiation, much to the satisfaction of Governor Pillsbury.

200 Eleventh Census, Report on Wealth, Debt, and Taxation. Part I, p. 106; Account of new issue: $4,253,000. See also Tenth Census Report, Vol. VII, p. 634.

CHAPTER V. THE LAND GRANT RAILROADS, 1861–1864.

The legislature which met in January, 1861, was nominally free to carry out any policy that might be deemed conducive to early railroad construction and favorable to the interests of the state. The land grant companies, of which the state through foreclosure and purchase now had possession, represented the more important projected railroads; and in connection with them were the immense federal land grants which would accrue as fast as the railroads were built. Railroad construction so heavily subsidized ought to be assured of success if properly managed, now that the state and nation were recovering from the effects of the panic. But there was no inclination or ability on the part of the state to build the roads herself. The corporate interests were merely held temporarily 4 50 and without merger or extinguishment.201 If construction were delayed, the federal land grants would be lost, for they were contingent on the fulfillment of definite time requirements.

201 So held later in Ry. Co. vs. Pascher, 14 Minn., 297.

Some immediate action was deemed necessary and the simplest course was taken. The Minnesota and Pacific railroad company was regrated freely its former road, lands, properties, privileges and immunities, free from all liens and claims held by the state.202 The property and franchises of the other three companies were likewise “continued, granted and transferred” to different groups of persons named in the enactments.203

202 Special laws, 1861, ch. 5.

203 Ibid., chs. 2, 3, and 4.

According to these enactments the Minneapolis and Cedar Valley and the Southern Minnesota companies were to be temporarily favored with a more lenient rate of taxation. During the first three years they were to pay one per cent of their gross earnings, the next seven years two per cent, and after ten years the full three per cent as required in the original enactments of 1857. These companies were, however, required to keep an accurate account of their gross earnings, and to transmit abstracts of these accounts certified under oath to the state treasurer annually; and the governor, or any other person appointed by law, was given plenary powers to ascertain the truth of the affidavits and the correctness of the abstracts. In collecting her percentum the state was given a prior claim over all other creditors.

The Minnesota and Pacific had these restrictive provisions in its original charter granted in 1857,204 and did not get the benefit of the lower tax rate. The Transit also continued liable to the full three per cent gross income tax, but was now the only land grant company not subject to the stricter regulations as to reports and investigation.

204 Session laws, 1857, extra session, ch. 1, sec. 18.

No mention was made of the state railroad bonds, for they had been virtually repudiated the year before. No attempt was made to bring the charter rights of these companies into 51 harmony with the provisions of the general incorporation law enacted in 1858. The main interest quite apparently centered on getting railroad construction resumed and the roads completed. The most important condition which the legislature in each case imposed was that a certain number of miles of railroad must be built within stated periods of time, to entitle the companies to the regrant of property and franchises. Each company was required to deposit $10,000 with the governor as a guarantee of good faith, to be forfeited if their obligations were not fulfilled.

Governor Ramsey had pointed out in his message to the legislature the importance to the agricultural interests of a railroad communication between the navigable waters of

the Mississippi and the head of Lake Superior, especially if in the “precipitate madness of sectional excitement” the free navigation of the Mississippi should be obstructed. The federal land grant of 1857 had not provided aid for such a railroad. The governor, therefore, recommended that this work be aided as far as possible by favorable legislation without “pecuniary involvement” on the part of the state, and suggested the donation of swamp lands along the line of such road, if it would not become a precedent which would divert the remainder of these lands from “other and more legitimate purposes.”205

205 Exec. docs., 1860, p. 12. Governor's Message, Jan. 9, 1861.

The legislature accordingly amended and continued the Nebraska and Lake Superior charter of 1857 by giving a new set of incorporators under a new name, the Lake Superior and Mississippi railroad company, a new special charter which gave this company the state swamp lands for seven miles on either side of the proposed road.206 The original had been accepted by the incorporators, but, as the corporation had not been dissolved by judicial decree for non-user of its charter rights and non-compliance with the conditions on which these were granted, the charter was technically operative207 and as such subject to legislative amendment. It was evidently deemed expedient to depart from the spirit if not the letter of the clause

206 Special laws, 1861, ch. 1; the amended act was ch. 93 of 1857 extra session laws.

207 Records in office of the secretary of state.

52 of the constitution forbidding the incorporation of other than municipal incorporations by special act.208 The legislature could have brought the Lake Superior and Mississippi railroad company, as well as the land grant companies, under the general railroad laws, had they so desired; but to satisfy the railroad interests, and thereby to promote and facilitate an early completion of these very important roads, the old regime of special railroad legislation was continued.

208 See 93 Wisc., 604, and cases there cited.

The regrant of property and franchises of the land grant companies made in 1861 brought no results. The people had looked forward to rapid railroad construction to meet the demand for improved transportation facilities which increased with the rapidly growing population, but with the approach of the Civil War construction plans had to be postponed. The Minnesota and Pacific had to be postponed. The Minnesota and Pacific was the only land grant company that complied with the enactments of 1861 by paying the costs of the foreclosure and depositing $10,000 as a guarantee of good faith. But the security and all charter rights and privileges were forfeited because the company failed to construct a railroad from St. Paul to St. Anthony, a distance of ten miles, by January 1, 1862, as required.209 The state remained in possession of the land grant “railroads.” There was as yet not one mile of completed railroad in the state.

209 Art. 10, sec. 2.

Governor Ramsey recommended to the next legislature the passage of a general law authorizing any company, on making a proper guarantee deposit, to exercise the forfeited rights of the defaulted companies. Since there was no ability on the part of the state to construct these roads, and in view of the fact that the grants would otherwise soon be lost, he believed that no obstacle should be placed in the way of those whose far-seeing, enterprise might induce them to undertake even a small part of these improvements immediately.210

210 Exec. does., 1861, p. 21; Governor's Message, Jan., 1862.

The legislature, however, made another regrant of the charter rights of the land grant companies to different companies as had been done the year before. An act was passed creating 53 the St. Paul and Pacific railroad company. To this company was granted, free and clear of all claims, all the franchises and interests of the Minnesota and Pacific

which had been acquired by the state, and also all rights, lands and property, granted to the company by the act of May 22, 1857. These grants were made on the condition that certain parts of the projected road were completed within specified times. The company was required to deposit with the governor $10,000 to be forfeited to the state if it failed to complete the portion of its road between St. Anthony and Anoka by January 1, 1864. The deposit might be made in money or bonds of the United States, or of the state of Minnesota or any state of the Union in good credit.211

211 Special laws, 1862, ch. 20.

The charter and land grant rights of the Minneapolis and Cedar Valley were vested in a new group of men and their successors, who were to retain the old corporate name. This company was to deposit $10,000 as evidence of good faith, if any other nine men were willing to deposit that amount as a guarantee that they would build the railroad and comply with the enactment.212 There is no mention of deposits in the regrants of the property and franchises of the other two land grant companies, the Root River Valley and Southern Minnesota and the Transit. The name of the latter company was changed to Winona and St. Peter.213 The Root River Valley and Southern Minnesota enactment is interesting, for in this the grantees are expressly created a body corporate under the name and style of the former company.214 In the other enactments, and in three of the regrants of 1861, new companies were evidently created, for charter rights were given to the grantees, their associates and successors.215

212 Ibid., ch. 17.

213 Ibid., ch. 19.

214 Ibid., ch. 18, sec. 1.

215 Ibid., 1861, chs. 2, 3, and 4.

The St. Paul and Pacific accepted the legislative grant, and immediately prepared to take up its work. As a deposit it offered $10,000 in Minnesota state railroad bonds, but the governor refused to accept these bonds as good security.216 In

216 Exec. does., 1862, p. 22.

54 the summer of 1862 ten miles of railroad were built to connect St. Paul and St. Anthony. The Winona and St. Peter was organized, and, beginning their construction work at Winona, the company worked westward. According to Governor Ramsey, it had the miles completed, with cars running, when he sent in his message to the legislature in January, 1863.217

217 Ibid., p. 22.

The other two companies did not even organize, and the next legislature, without any further action, gave the same rights and privileges to new companies in the hope that the work would be taken up. The St. Paul and Pacific was authorized to build two branch lines, one from some point on its line near St. Cloud to Duluth,218 and another from St. Paul to Winona.219 In the connection with the former were congressional land grants;220 the latter was to be subsidized by a grant of all state swamp lands within the limits of seven miles on either side of the branch.

218 Special laws, 1863, ch. 3.

219 Ibid., ch. 4.

220 12 U. S. Stat., 624; Joint Resolution approved July 12, 1862.

The Minneapolis and Cedar Valley organized and began its work. By the close of the year it had connected Mendota and Northfield by rail. The Winona and St. Peter extended its line as far as St. Charles, making a total of twenty-nine miles. The St. Paul and Pacific fulfilled its obligations by completing its line between St. Anthony and Anoka.221

221 Exec. does., 1863; Governor's Message, Jan., 1864.

The people were encouraged by the sight of railroad construction, but neither they nor the companies were satisfied with the slow rate of progress toward the realization of their great hopes for the future. They were anxious to get railroads to Lake Superior, that Duluth might rival and eventually eclipse Chicago. With St. Paul in railroad communication with the British northwest, St. Anthony with Iowa, Winona connected with railroads in the Minnesota Valley, and the Minnesota railroads a link in the chain of Pacific and Atlantic railroad communications, many felt convinced that Minnesota would soon become the great railroad and commercial center of the United States. Governor Swift believed that the aid of Congress and encouragement by the state legislature would 55 be necessary, if Minnesota were to complete the work assigned to her in this continental program, and he warned the legislature against ill-advised economy.222

222 Ibid., 1863, p. 5; Inaugural Address

The Root River Valley and Southern Minnesota did not begin work on its lines and in 1864 its forfeited property, franchises,and land grant rights, were given to two new, independent companies, namely, the Minnesota Valley railroad company, which was to build its main line from St. Paul, St. Anthony, and Minneapolis along the Minnesota river to South Bend, and from there on in a southwesterly direction to the state line; and the Southern Minnesota, which was to build a railroad from La Crescent to Rochester, and a “branch” extending across the state through its southern tier of counties.223 These companies immediately organized and began their work.

223 Special Laws, 1864, Ch. I, chs. 1 and 2.

The name of the Minneapolis and Cedar Valley was changed to Minnesota Central and its “charter” of 1862 was amended by materially changing one section and adding nine new

sections.224 This left but little intact of the original charter of 1856, of which the later acts were amendatory.

224 Special Laws, 1862, ch. 17, which had been “amended to read as” secs. 1–14 of Special Laws, 1863, ch. 2.

To secure the more speedy construction of the St. Paul and Pacific, this company was permitted to form division companies to undertake the construction and management of definite parts of its rather indefinite projected lines. This was intended to attract foreign capitalists, who, while they might readily be induced to finance railroads within the borders of a rapidly growing state, were somewhat reluctant about furnishing capital to a company planning to build a railroad from St. Paul across the great Western wilderness to the Pacific.

The first division of the St. Paul and Pacific railroad company was accordingly organized without delay. The St. Paul and Pacific by contract gave this division company its rights and interests pertaining to the part of its line extending from St. Paul to Watab, and also of the line from St. Anthony to a point between the Big Stone lake and the mouth of the Sioux 56 Wood river.225 Foreign capital, especially from Holland, flowed freely, and, as later investigations showed, was spent freely. Much more money was expended than honest construction, mostly on level prairie, could demand;226 but railroads were being built, and that was the main consideration at that time.

225 See Special Laws, 1866, ch. 1, sec. 1.

226 Exec. Docs., 1873, p. 7; Governor Austin's Message.

The organization of the holders of special and preferred stock, under the name of the First Division of the St. Paul and Pacific, was formally recognized by the legislature in 1866;227 and a further subdivision was authorized, giving to the holders of stock issued on the line from St. Anthony westward an independent corporate existence under the

name of the Great Western Railway of Minnesota.228 By this system of division and subdivision, an indefinite number of corporations could have come into existence, all enjoying special charter privileges and independent of the general railroad laws. For the purpose of financing construction, the tendency toward decentralization was marked. The construction of parts of the main line and of the branches was generally contracted for separately. When each division thus built was pledged as security separate from the rest, it formed a tangible asset, and those who held bonds secured by one division were not materially affected by the issue of bonds secured by other divisions. On the other hand, the solvency of the company as a whole would not be imperiled through failure to meet obligations on one of its parts. In 1864 both the Southern Minnesota and the Minnesota Valley were authorized to issue special stock on any part of their railroad or branches, and to pledge the net receipts of the different divisions toward the payment of dividends on such special stock.229 In the case of the St. Paul and Pacific, this idea of division was carried to the extreme, in that this company under legislative sanction could virtually give to the stockholders of each of its divisions a separate corporate existence.

227 Special Laws, 1866, ch. 1.

228 Special Laws, 1866, ch. 2.

229 Special Laws, 1864, Ch. I, chs. 1 and 2; General Laws, 1864, ch. 55 provides for the registry of such organizations and agreements.

57 This decentralizing tendency, however, was only temporary, its purpose being merely to facilitate railroad construction. When the railroads were built and put into service, the tendency toward consolidation immediately began.

CHAPTER VI. AID TO RAILROADS, 1864–1870.

The national government did not disappoint the state in her hopes for further aid in railroad construction. On May 5, 1864, Minnesota was given five alternate sections on each side of the proposed line from St. Paul to Lake Superior.230 A week later four additional

alternate sections per mile were given to aid the already subsidized line project from St. Paul, St. Anthony and Minneapolis, southwestward to the state line.231 These grants were accepted by the state legislature in 1865, and were given to the Lake Superior and Mississippi232 and the Minnesota Valley233 railroad companies respectively. A discussion arose in the state senate as to whether the Lake Superior and Mississippi could be given the grant. In answer to one of a series of resolutions submitted to him, the attorney general gave as his opinion that since the amendatory act of 1861, on which the existing company based its corporate rights, had in fact created new and distinct corporate franchises in aid of a different enterprise, to the destruction of the original franchise, this act was repugnant to the clause of the constitution prohibiting the formation of corporations by special acts.234 His opinion, however, was disregarded by the legislature, and the act was passed granting the land and recognizing as valid the amendments of 1861 and 1863.235

230 13 U. S. Stat., 64.

231 13 U. S. Stat. 74.

232 Special Laws, 1865, ch. 2.

233 General Laws, 1865, ch. 15.

234 Opinions of the Attorney General (Minn.), 1858–1885; his opinion was given Jan. 31, 1865; the act was approved Feb. 23, 1865.

235 Special Laws, 1861, ch. 1; 1863, ch. 5.

In March, 1865, Congress extended the time for the completion of the railroads of the land grant companies, and increased the land grants of 1857 to ten sections per mile for 58 each of the railroad lines and branches.236 In the following session Minnesota was given five alternate sections per mile on each side of the proposed line from Houston to the western state boundary in aid of this road,237 and another similar grant to aid the

construction of a railroad from Hastings to the western boundary.238 The former grant was given to the Southern Minnesota.239 The latter was given to the Hastings, Minnesota and Red River of the North railroad company.240 This corporation had been created the previous year by an act amendatory to the charter of a company of the same name granted by the territorial legislature in 1857.241 In all, about twelve million acres,242 or very nearly one-fourth of the total land area of Minnesota, was given by the federal government to aid the construction of her railroads.

236 13 U. S. Stat., 526, act approved March 3, 1865.

237 14. U. S. Stat., 87, act approved July 4, 1866.

238 14 U. S. Stat., 87, act approved July 4, 1866.

239 Special Laws, 1867, ch. 6.

240 Ibid., ch. 12.

241 Session Laws, 1857, ch. 39.

242 Donaldson, The Public Domain, Its History and Statistics.

Railroad Co. Date of Grant. Amount.

1st Div., St. Paul and Pac., Mach. 3, 1857, and Mch. 3, 1865 1,248,450 acres

Minn. Western, Mch. 3, 1857,and Mch. 3, 1865 815,000 "

Minn. Central, Mch. 3, 1857, and Mch. 3, 1865 180,000 "

Winona and St. Peter, Mch. 3, 1857, and Mch. 3, 1865 1,670,000 "

St. Paul and Sioux City, Mch. 3, 1857, and May 12, 1865 1,205,000 "

Lake Superior and Miss., May 5, 1863 862,000 "

Southern Minn., July 5, 1866 500,000 "

Hastings and Dakota, July 5, 1866 350,000 "

St. Vincent (St. P. and Pac.), Mch. 3, 1871 1,500,000 "

Northern Pacific (in Minn.), July 2, 1864 3,392,000 "

Besides these congressional land grants, there were also land grants made from the state swamp lands held under acts of Congress passed in 1851 and 1860.243 As we have already seen, the Lake Superior and Mississippi in 1861 received a grant of the swamp lands within seven miles of each side of its railroad.244 In 1863 the St. Paul and Pacific received from the state a grant of all the swamp lands lying within the limits of seven miles on each side of a proposed branch road from St. Paul to Winona in aid of this branch.245 In 1865 certain swamp

243 Acts approved Sept. 28, 1851, and March 12, 1860.

244 Special Laws, 1861, ch. 1.

245 Special Laws, 1863, ch. 4.

59 lands were set apart and granted to the Southern Minnesota and the Minneapolis and St. Cloud railroad companies, to accrue at the rate of four sections of land for each mile of certain parts of their railroads completed within specified time limits.246 In 1864 a new group of incorporators had been given the charter of the old Minneapolis and St. Cloud railroad company incorporated in 1856.247 Fortunately the new corporation did not organize within six months as required, for the old company had organized and kept up its corporate existence and was not willing to see its valuable franchises turned over to

others.248 The legislature, therefore, repealed the sections of the act of the previous year which conflicted with the rights of the old corporation.

246 Ibid., 1865, chs. 1 and 3.

247 Ibid., 1864, ch. 5, amending Session Laws, 1856, ch. 160.

248 Ibid., 1865, ch. 4, sec. 1, summarizes the facts of the case.

The national and state governments were not the only sources of beneficent aid; the local governments were, according to ability, even more liberal. In 1864 St. Paul was authorized to provide for the purchase of depot grounds and right of way for the use of the Minnesota Central,249 and the action of its city council in voting the issue of bonds to the amount of $250,000 was legalized and confirmed by the state legislature.250 According to the general statutes of 1866 it was unlawful for the corporate officials of any county, township, city, town or village, unless specially and expressly authorized by law, to incur any liability for the payment of either the principal or interest for which it would be necessary to levy more than a fixed maximum rate during the current year or any subsequent year. The officials were made personally liable for all contracts made in contravention of these provisions.251 This practically meant that municipal aid to railroads could only be given by special legislative consent; but, judging from the increasing number of enactments from 1866 and on, which authorized such aid by counties, towns, cities and villages throughout the state, such consent must have been readily obtained.

249 Special Laws, 1864, ch. 37.

250 Ibid., ch. 49.

251 General statutes, 1866, ch. 11, secs. 78–80.

When a municipal bond issue was authorized, the legislature, as a rule, limited the amount which might be issued and fixed a maximum rate of interest and also a certain time within which the bonds were to be made payable. In each case the question of bond issue was to be referred to the voters of the territorial unit concerned, and the bonds were not to be delivered until the railroad company had fulfilled its part of the agreement. Taxation to meet the obligations of the bonds was generally expressly authorized, and the levy and collection of taxes for this purpose were made the duty of the local officials.

Beginning in 1869, the legislature frequently fixed the maximum total indebtedness which might be incurred for the purpose of aiding railroads as a fixed per cent of the assessed valuation of the taxable property, generally ten per cent. In November, 1872, this per cent was fixed as the maximum for all counties, towns, cities and villages within the state, by the adoption of an amendment to the state constitution.252 An act of 1871 provided for the registration of all municipal bonds at the office of the state auditor. The auditor was required to ascertain annually the amount of interest due and accrued on such bonds in each county, and to transmit statements of the amount due to each county auditor. The county auditor in turn was required to levy sufficient taxes in each of the local units to pay the interest on its bonds. These taxes were to be collected along with the state taxes and according to the same laws.253

252 General Laws, 1872, ch. 13, ratified at the November election.

253 General Laws, 1871, ch. 17.

The different localities had been willing, and many others were still willing, to vote almost any bonus demanded by the railroad companies; but experience had already shown that when the burden began to be felt, and when the railroads failed to fulfill all their expectations, they were not all willing to meet their obligations. A centralized administration of these taxes became necessary to insure their levy and prompt collection and disbursement.

CHAPTER VII. ATTEMPTS AT RAILROAD CONTROL, 1861–1870.

Special railroad legislation occupied the attention of the state legislature a great deal of the time during the sixties. It is evident that the idea of legislating railroads into existence had not yet been abandoned. Land grants were invariably given to companies not under the general railroad law, and as long as the legislature had federal and state lands at its disposal; and later, when the time limits set for the completion of the railroads were about to expire, it tried in each instance to drive the best bargain possible through special legislation. At first the main consideration was the early completion of the roads, but soon various kinds of control and regulation became common stipulations. The railroad companies looked upon their charters as contracts which the state could not materially alter without their consent. They would accept or disregard the legislative enactments at their pleasure. If a company could not get what it wanted from one legislature, it would wait and try to get it from the next. In the meantime the demand for its railroad would be constantly increasing, and a popular clamor would support its demands.

In the year 1862 the St. Paul and Pacific built ten miles of railroad and trains began to run between St. Paul and St. Anthony. By the end of 1865, notwithstanding the Civil War, which had just been concluded, and the Sioux Indian massacres of 1862, which had cast gloom and discouragement over the state, there were two hundred and ten miles of railroad in Minnesota, of which over half had been built in that one year. In the four following years one hundred and five, one hundred and fourteen, one hundred and thirty-one, and two hundred and ten miles, respectively, were built. The year 1870 added three hundred and twenty-two and a half miles, making a total mileage of one thousand ninety-two and a half, with gross receipts amounting to nearly three million dollars in that year.254

254 Report of Railroad Commissioner, 1871, p. 42, and table inserted opposite p. 40.

In spite of the impatient struggle for railroads in evidence in all parts of the state before railroads were built, we find 62 that no sooner had they been built than an equally impatient struggle with the railroads began. The railroads were charged with discrimination and extortion, and the power of the state control became a subject for heated discussion. Throughout the confusing mass of special legislation intended mainly to facilitate railroad construction, we find, strangely enough, a marked tendency toward state control.

The old territorial charters had, as a rule, authorized the railroad companies to fix their own rates; and, as we have seen, a number of these charters were from time to time revived and continued. As long as the different railroads remained independent, it was often difficult to get them to make proper connections; and, connections having been made, each would through its rate-making powers try to get the lion's share of the profit on the joint traffic. It was not long before some sort of government regulation was found to be necessary. In the years 1862–65 the legislature in amending the territorial charters frequently inserted the provision that the railroads were to transport all passengers and freight delivered to them by any connecting line on the same terms and at no higher rate for the same service than was at the time charged patrons living on their own lines, and the connecting lines were to be governed by the same rule.255

255 Special Laws, 1862, chs. 17, 19, 20; 1863, chs. 1 and 2; 1864, ch. I, chs. 1 and 2; 1865, ch. 2.

From 1866 to 1870 a number of the special railroad laws contained the provision that the railroad company should be bound to carry freight and passengers at reasonable rates. Two companies were authorized to build branch roads conditional on compliance with this provision.256 Four enactments authorized the construction of branches with this provision applicable to the branches.257 In two of the revived charters this provision was incorporated as an amendment.258 One company was authorized to withdraw a $20,000 guarantee deposit, provided it submitted to this exaction.259 The evident object of this provision was to make the railroads possessing special

256 Ibid., 1866, chs. 4 and p.

257 Ibid., 1867, ch. 18; 1868, ch. 9; 1890, chs. 59 and 60.

258 Ibid., 1867, ch. 11; 1870, ch. 57.

259 Ibid., 1866, ch. 6.

63 rate-making powers subject to the common law rule that common carriers may only charge uniform and reasonable rates. If railroads were placed on the same footing as other common carriers, the question of reasonableness would, in the absence of legislative enactment, be determined in court. The right of the legislature to fix rates for turnpike, canal, and plank-road companies, had been generally accepted, and maximum rates were frequently fixed in the charters. Until the Dart-mouth College decision,260 the state legislatures could establish or change rates for common carriers at any time. After this decision they would have the same right unless “contracted away” in the charters. As a result of this series of enactments, the principal lines of the state were legally bound to carry passengers and freight at reasonable rates. Later the legislature tried to determine what the maximum of reasonable rates was.

260 4 Wheaton, 518, February Term, 1819.

In 1866 the legislature authorized the construction of two branch roads, expressly reserving in each case the right to regulate the price of freight and fare on the proposed branch.261 A similar reservation was made in an act authorizing an Iowa company to build a railroad connecting its line in Iowa with the Minnesota Central at Austin, Minnesota.262 In 1867 the congressional land grant of the previous year was given to the Southern Minnesota, “provided, that the legislature shall have the right to fix and regulate from time to time the rates of freight and passenger tariffs on said railway, or on any branch or division thereof.”263 A discussion arose in this legislature as to whether it had the constitutional power to fix and regulate freight and passenger rates, and particularly

whether the exercise of such power would be in conflict with the judicial power. These questions were referred to the attorney general, who gave as his opinion that “as the courts must decide from the evidence in each case as it arises, whether such rates are equal and reasonable, therefore, legislative enactment to fix or establish such rates specifically would, unless accepted by the

261 Ibid., 1866, chs. 7 and 11.

262 Ibid., 1866, ch. 8.

263 Ibid., 1867, ch. 6.

64 company, be in derogation of the judicial powers, and of no binding force or validity.”264 As a result of this opinion, no more laws asserting the right of the legislature to make any such regulation were passed for several years. The offending provision in the Southern Minnesota enactment265 was immediately repealed, and the company announced in a prospectus issued some time later that the state had “disclaimed all right to interfere by legislation with the rates of freight and passage over the road, no such right having been reserved by the charter.”266

264 Opinions of the Attorney General (1858–1884), pp. 237–8, Feb. 20, 1867.

265 Special Laws, 1867, ch. 7.

266 Prospectus of Southern Minn. Railroad Company, 1869, p. 10.

The general incorporation law of 1858 had fixed a maximum rate of three cents per passenger mile, and five cents per ton mile, for companies organized under this act. In the general statutes of 1866 this provision remained unchanged. The legislature had not succeeded in fixing maximum rates for the companies not under the general law, and the question came up for discussion why unaided railroads under the general law should not be allowed to charge as much for their services as the companies who had been heavily

subsidized with land grants.267 A bill was introduced in the legislature of 1869, the object of which was to bring all the railroads of the state under the same general law respecting rates.268 This bill was defeated, and another bill passed, which authorized any railroad company organized under the general law to charge-such reasonable rate for freight and passengers as might be fixed by the corporation or prescribed by law.269

267 St. Paul Daily Press, Feb. 18, 1869, p. 1, c. 2.

268 Ibid., Feb. 14, 1869.

269 General Laws, 1869, ch. 78, sec. 2.

The territorial charters had in most cases provided different penalties for damaging or obstructing trains, or endangering the lives of passengers, on the different railroads. This lack of uniformity was remedied by a general law enacted in 1868, which was made applicable to all the railroads of the state.270 The legislature did not find it necessary in this case

270 General Laws, 1868, ch. 57.

65 to make an amendment to each of the several territorial charters in force at the time.

From the first the gross income tax was invariably associated with federal land grants. This idea seems to have originated in Illinois, in connection with the Illinois Central, the pioneer land grant railroad, company.271 In 1854 Wisconsin made a gross income tax of one per cent, in lieu of all other taxes, applicable to all her railroads.272 The constitution of the state of Minnesota provided that “all taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state.”273 When state lands were given, no mention was made of the gross income tax; for instance, when the Lake Superior and Mississippi was given state swamp lands in 1861.274 But when the same company four years later was given a federal land grant, a gross income tax was imposed on the

company in lieu of all other taxes, state and local.275 In the former case a gross income tax would have been clearly unconstitutional, but in the latter the state, as a trustee of the federal government, could dispose of the lands under such conditions as it might see fit to impose, being responsible only to Congress for the manner in which the trust was executed. This form of taxation was believed to be less burdensome and vexatious to the railroads, especially in their infancy, and ultimately more advantageous and productive to the state.276

271 Private Laws of Ill., 1851, p. 61.

272 General Laws of Wis., 1854, ch. 74.

273 Art. p., sec. 1.

274 Special Laws, 1861, ch. 1.

275 Ibid., 1865, ch. 2; Land grant of May 5, 1864.

276 St. Paul vs. Ry. Co., 23 Minn., 469.

Three per cent was at first the usual rate required; but, as an added inducement to an early construction of the projected lines, the burden was temporarily made lighter. By special enactments in each case, every company having claims to federal land grants was, by 1865, required to pay only one percent of its gross receipts annually for the first three years after the first thirty miles of railroad had been completed, two per cent for the next seven years, and after ten years the full three 5 66 per cent. Later land grants contained similar provisions. In 1870 the nine railroad companies paying gross income taxes paid according to this plan.277

277 Report of the Railroad Commission, 1871, table opposite p. 40.

The companies favored this form of taxation, for it relieved them of all local taxation. They seem to have regarded the temporary reduction as a very substantial aid.278 The people as a rule were satisfied with this method of taxing the railroads, for, while the companies were exempt from local taxation, the state as a whole would be benefited by this substantial source of income to the state treasury.

278 Prospectus of Southern Minn. Ry. Co., 1865, p. 9; 1869, p. 14.

In connection with the collection of the gross income tax came a certain amount of supervision of accounts. This was expressly provided for in the enactments. The governor, or any other person legally appointed, was given authority to inspect the books and papers of the railroad companies and to examine their officers, agents and servants under oath, to ascertain the truth of their reports.

According to the original enactments the land grants held by the railroads were exempt from taxation until sold and conveyed. Interpreting this provision liberally, the railroad companies rented out land on long time leases and delayed in formally conveying much land actually sold, thus withholding such land from the operation of the tax laws. Since the railroads were not subject to general law, the legislature tried to remedy the evil by passing a series of special enactments, providing that land was to be sold, conveyed, or leased; but, in case of delinquent taxes on such land, the title or interest of the railroads company or of any trustee or mortgagee was not to be impaired, only the improvements and interests of the purchaser or lessee being liable to forced sale.279 It was optional with the companies in each case, however, to accept these enactments or not, as they chose. The revived charters of the Hastings, Minnesota and Red River of the North and of the Minnesota Central also contain these provisions.280 The right of the state legislature to exempt the lands from taxation, conditioned on the payment of a percentage of the annual gross

279 General Laws, 1865, ch. 15; Special Laws, 1865, chs. 5, 7, 8, 9, 10.

280 Special Laws, 1866, ch. 12, sec. 19; 1867, ch. 11, sec. 19.

67 earnings of the companies, was not seriously questioned for over thirty years. The gross income tax itself was clearly recognized in a constitutional amendment ratified in 1871.281 When in 1895 the state legislature tried to subject to taxation the land grants still held by the railroads, this act, though upheld by the state supreme court, was declared unconstitutional by the federal supreme court because it impaired the obligation of contracts made by the state with the railroad companies.282 The state supreme court had up to this time (1898) consistently upheld the gross income tax and the exemption from other forms of taxation of railroad franchises and property, including the land grants received from the federal government.283

281 General Laws, 1871, ch. 18.

282 Stearns vs. Minn., 179 U. S., 223; reversing 72 Minn., 200 (1898).

283 Ry. Co. vs. Parcher, 14 Minn., 297; Minn. vs. Ry. Co., 21 Minn., 315 and 472; Ry. Co. vs. St. Paul, 21 Minn., 526; Ramsey County vs. Ry. Co., 33 Minn., 537; Todd County vs. Ry. Co., 38 Minn., 163; St. Paul vs. Ry. Co., 39 Minn., 112; State vs. Luther, 56 Minn., 156.

In 1871 the railroad commissioner estimated the total land grants to railroads in Minnesota at 12,222,780 acres, “an area larger than the whole of Massachusetts, Rhode Island, Connecticut, and one-half of New Hampshire, embracing much of the finest wheat land in America.”284 Up to the close of the year 1870 municipal aid to these railroads had been voted to the sum of $1,751,000, of which $388,000 had been received.285 In his discussion of the aid given the first division of the St. Paul and Pacific, the commissioner concludes: “It appears then that the public has granted for its construction $43,452 per mile for the length of the road.”286 Other railroad companies had received, in lands and municipal aid, from $8,400 to $29,000 per mile, according to his estimation.287 Six years before the Southern Minnesota railroad company, to which the state had given about half

of the property and interests of one of the original land grant companies, estimated the value of its share of the roadway, grading and bridging of its defaulted predecessor at over $200,000. It valued fifty thousand acres of

284 Report of the Railroad Commissioner, 1871, p. 12.

285 Ibid., p. 50, table 10.

286 Ibid., p. 13.

287 Ibid., p. 12, ff.

68 its federal land grant at about $300,000, and its one hundred and fifty thousand acres of state swamp lands at $375,000, with prospects of immediate increase and both grants exempt from taxation till sold by the company.288 These figures are not much below those of the railroad commissioner. The people had not forgotten these grants and they naturally looked for corresponding benefits.

288 Prospectus of Southern Minnesota Railroad Company, 1865, p. 5.

The state had heavily subsidized these railroads, and as a result 993 ½ miles, out of a total mileage of 1,092 ½, were operated by land grant companies, although thirty-nine other companies had been incorporated under the general incorporation law during the years 1858 to 1870.289 We find, then, that over ninety per cent of the mileage was governed by special law and subject to an extra-constitutional system of taxation. According to the Dartmouth College decision, these companies were virtually beyond the control of the state whose legislature had originally created them.

289 Report of the Railroad Commissioner, 1871; see list in appendix, p. 93, ff.

The main railroad problem had at first been how to get railroads constructed. When the railroads actually began operation, new problems arose which proved fully as difficult. Railroads were being built in advance of the business needs of the country, and

competition for larger shares of the meager business soon led to discrimination. The companies tried at non-competitive points to make up for their low rates at competitive points. Farmers at some places had to haul their wheat fifteen or twenty miles beyond their nearest market, to get the benefit of more favorable rates. Between certain points freight charges were so high that farm products and merchandise could be hauled more cheaply by team.290 The success of individual shippers, as well as the prosperity of entire communities, depended largely on the good will of the railroad companies.291 In order to secure elevators and proper facilities for handling grain along their lines, some railroads had guaranteed to certain grain-dealers special reduced rates and rebates. This resulted in a virtual monopoly of the local

290 Ibid., p. 17.

291 Stickney, the Railway Problem, ch. 4.

69 grain markets, and frequently led to gross abuses which the state had no power to remedy under the existing interpretation of the law. Other railroad companies had built their own elevators and bought the grain themselves. Competitors were generally denied access to the railroads, and those who secured access were unable to compete because of the higher rates charged them. When farmers decided to ship the grain themselves, they almost universally found it an unprofitable undertaking.292 Loud and frequent complaints of extortion, and of unjust and burdensome discrimination, were heard along the different lines right from the start. The farmers especially believed themselves to be at the mercy of the “corporations.” The situation was all the more exasperating because the railroads operating at the time had been so heavily subsidized by the state. In 1865 the directors of a land grant company had looked upon their enterprise as a “trust liberally bestowed upon them by the state to be carried out faithfully and honestly, but also for the development of the resources of the state, and as a part of its well-devised system of improvements.”293 The public in general was not very well satisfied with the manner in which the companies had carried out their trusts.

292 Ibid., ch. 3.

293 Prospectus of the Southern Minnesota Railroad Company, 1865, p. 12.

The state had given the railroad companies appropriation rights which could legally be exercised only for public purposes. These rights had been freely made use of. From this it was argued that the railroads were public highways, and that all had an equal right to their use.294 The courts had held the railroads to be common carriers. As such they would, under the common law, be bound to serve the public at equal and reasonable rates without discrimination. This restriction had, according to the Dartmouth College decision, been contracted away in the case of the special charter companies. The vested rights of the companies were upheld by the courts, but now the people began to believe that they, too, had certain

294 For instance, in a letter read at the Minn., State Grange, June, 1870, and ordered printed for circulation. O. H. Kelley, Patrons of Husbandry, pp. 256–259.

70 “vested rights,” and they meant to assert them. This struggle on the part of the people to maintain its common law right of control over railroads as common carriers has become known as the Granger Movement.

CHAPTER VIII. THE GRANGERS.

The Granger Movement derives its name from the Grangers, a term popularly applied to the Patrons of Husbandry, a secret agricultural order whose lodges are known as granges. The so-called granger or anti-railroad movement, which resulted in restrictive legislation, aiming to control railroad rates, in Illinois, Iowa, Minnesota, and Wisconsin, was only a comparatively local manifestation of a general farmers' movement, which had for some time been gaining momentum both in this country and in Europe. In the United States the National Order of the Patrons of Husbandry proved one of the most efficient organizations for this general movement, which resulted in a very marked advance in

the social, economic, and political position of the American farmer. The membership of the order had a phenomenal increase among the farmers of the country at the time when the farmers, especially in the middle west, were in the midst of their revolt against what they termed railroad oppression; and the popular name of the members of the order immediately became associated with the anti-railroad agitation in a few states, rather than with the more general movement.

The two decades preceding 1870 had been a period of organization among the farmers. Societies for the promotion of agriculture had been organized in this country as early as 1785, and for many years a number of these societies did much good in encouraging this industry by holding fairs and awarding prizes for the best cattle, sheep, farm produce, and farm implements, exhibited. They also awarded prizes for essays on agriculture, and distributed these essays and other agricultural literature among the farmers. The proceedings of their meetings were generally published in the local papers, and in 71 this way some came to exert a wide influence. The members of these societies, however, were not the average farmers of the community, but were in the main “gentlemen, merchants, and landowners,” who from philanthropic and patriotic motives wished to foster and develop the agriculture of the country. A large proportion of the farmers at the time looked upon their occupation as mean and servile, and comparatively few took any pride in their work.

A number of county and state agricultural societies were formed in the first decade of the nineteenth century; but the main incentive to an active interest in such organizations came in the year 1837–8, when food products had to be imported to the amount of several million dollars. Congress in 1839 appropriated $1,000 “for the collection of agricultural statistics and investigations for promoting agriculture and rural economy and the procurement of cuttings and seeds for gratuitous distribution among the farmers.” This appropriation was made at the suggestion of the commissioner of patents. After 1847 appropriations became regular and were constantly increased in amount, so as to be more commensurate with the end in view. The first United States Agricultural Report was

made by the patent office in 1839. This office through its agricultural division did much for the advancement of agriculture, and demonstrated the need of a separate department of agriculture.

As early as 1841 an attempt was made to organize a national agricultural society, but without success. In 1852 twelve state agricultural societies called a national convention, which met at Washington, D. C., June 14, 1852. Twenty-three states and territories were represented, and the United States Agricultural Society was organized. This society met annually at Washington, D. C., and held successful agricultural exhibitions in different parts of the country every year until the outbreak of the Civil War.

In an address published in the agricultural report of 1852, the number of agricultural societies in the United States was said to be three hundred.295 Five years later the commissioner

295 Agricultural Report, 1852, p. 22; Report of the Commissioner of Patents.

72 of patents named twenty-one states in which states agricultural societies had been incorporated, and estimated the total number of agricultural societies at eight hundred.296 The commissioner of patents, and later the commissioner of agriculture, encouraged the formation of such societies in every part of the country, and advocated a more intimate union and a more decided co-operation on their part with the general government in the great work of agricultural improvement. The government was especially interested in efficient local organizations which could furnish agricultural statistics.297 In 1867 there were 1,367 agricultural societies recorded on the books of the department of agriculture. Most of the county societies had been organized between 1850 and 1860, while the greater number of the more numerous township societies and farmers' clubs had been started after 1860.298 In some states many more were organized between 1867 and 1870.299

296 Ibid., 1857, p. 13.

297 Ibid., 1860, pp. 20–22; Report of the Commissioner of Agriculture, 1863, p. 9.

298 Report of the Commissioner of Agriculture. 1867, pp. 364–403. List of agricultural societies, their officers, date of organization, etc.

299 List of agricultural and pomological societies, farmers' clubs, etc., on the books of the Department of Agriculture, July 1, 1870, 47 pp.

The state, county, and township societies were in various ways encouraged and subsidized by the state and national governments. In most cases their main function seems to have been to hold annual fairs and exhibits, or to assist in such undertakings. These fairs were of great educational value to the farmers, and did much to encourage invention and improved agricultural methods. At first the work was unjustly criticized and ridiculed by those whom it was intended to benefit, but later the farmer came to see that he actually could learn something new about farming. But when the farmers themselves became interested, they were not content with annual meetings, fairs and exhibitions, and the voluminous literature distributed among them. They proceeded to organize farmers' clubs, which met frequently for social intercourse and mutual aid in solving practical every-day problems. As early as 1846 the Monthly Journal of Agriculture published a set of 73 rules for the organization and government of farmers' clubs, and urged the farmers to unite and look after their own welfare as the other classes were doing.300 Agricultural papers frequently published such constitutions, and the call to unite became more urgent as time went on and the practicability of such organizations became more apparent. Most of the township organizations in the lists of agricultural societies published by the commissioner of agriculture in 1867 and in 1870 were farmers' clubs. This movement was general, and we find these clubs in all parts of the country. It was at this time that the order of Patrons of Husbandry appeared on the scene and gave this general movement an efficient centralized organization.

300 Monthly Journal of Agriculture (New York), vol. II, p. 241.

The idea of a national agricultural order originated with Mr. Oliver H. Kelley, a native of Boston, who moved to Minnesota in 1849, settling on a farm near Itasca, Sherburne county. He spent the winter of 1864 in Washington, receiving a clerkship in the department of agriculture by the friendly aid of Senator Ramsey of Minnesota. He returned to Minnesota in the spring of 1865. On January 1, 1866, he received a commission as special agent of the agricultural department to investigate the agricultural and mineral resources of the South. As a government official he did not expect a very friendly reception, but, being a freemason of good standing and a man of tact and pleasing address, he travelled through all the states east of the. Mississippi without any unpleasant experiences, returning to Washington, April 21, 1866. The war had just closed, and the work of material recuperation had scarcely begun. Mr. Kelley became convinced that there was need of a fraternal organization of all the farmers in both North and South, to obliterate sectionalism and to elevate the farmers as a class to a position of dignity and power. Agricultural clubs were numerous, but they were neither permanent nor effective. He conceived the idea of a union of agricultural societies for practical co-operation in the promotion of their common interests, a masonry of farmers.

Mr. Kelley spent the summer of 1866 at work on his farm in Minnesota, but returned to Washington in November. 74 Early in January, 1867, he secured an appointment in the post office department. In the summer of 1867 he succeeded in interesting a small select group of men, most of whom were clerks in various departments.301 After much work and careful deliberation they completed a scheme of organization, and on December 4th they constituted themselves the National Grange of the Patrons of Husbandry. As modified the following January, the plan of organization was as follows:

301 W. M. Ireland, chief clerk in Finance Office of Post Office Dept.; Wm. Saunders, superintendent of the garden and grounds of the Agricultural Dept.; Rev. A. B. Grosh, clerk in the Agricultural Dept.; Rev. John Trimble, clerk in the Treasury Dept.; J. R. Thompson, clerk in the Treasury Dept.; F. M. McDowell, vineyardist at Wayne, N. Y.

Subordinate Granges.

1st degree, Laborer (male) or Maid (female);

2nd degree, Cultivator or Shepherdess;

3rd degree, Harvester or Gleaner;

4th degree, Husbandman or Matron.

State Grange.

5th degree, Pomona (Hope). All masters and past masters of subordinate granges are entitled to this degree ex officio.

National Grange.

6th degree, Flora (Charity). All masters and past masters of state granges are ex officio entitled to this degree. Those of the sixth degree constitute the national council and meet annually.

7th degree, Ceres (Faith). All who have served one year in the national council are eligible and on attaining the degree become members of the senate. All acts and resolutions originate in the council, but are subject to the approval or rejection of the senate.

The order was designed to include on equal terms all men and women interested in agriculture. The first officers were to serve five years, so as to secure the control of the order in the hands of the founders during its formative period. A circular was published in February, setting forth the educational and social advantages offered by the new order which by the charm of secrecy would tend to insure permanence. Mr. Kelley 75 had advocated the insertion of a few words relative to co-operation in protecting the members from imposition and fraud, for he was satisfied that such a feature would be necessary

to make the order popular. Others, however, were of a different opinion, and it was not incorporated.

Mr. Kelley resigned his clerkship in February, 1868, that he might devote his entire time to the promotion of the order. A trial grange was organized, and the ritual was practiced and perfected; and soon a regular subordinate grange, which was given the name Harvest Grange, was established in Washington. Kelley now decided to leave for Minnesota to begin work among the farmers there. Before he left, the National Grange met (six in all) and authorized him to visit the different states to organize the order, and generously voted him an annual salary of two thousand dollars and necessary travelling expenses, “the same to be collected by him from receipts from subordinate granges.”

On April 3, 1868, Mr. Kelley left Washington, determined to work his way to Minnesota by organizing granges. He had a remarkable faith in the project, and believed that the order could and should pay its own expenses. He attempted to organize a grange in Harrisburg, Pennsylvania, but did not succeed. At Penn Yan, N. Y., he met with cheering words from a brother Mason and Patron, Mr. McDowell, who had for some time been interested in the order, but he failed in his attempt to establish a grange. At Fredonia, N. Y., however, he met with success, and the first regularly organized grange of the order was there established. Mr. Kelley next had an agreeable visit with a friend of the order in Spencer, Ohio, Mr. Bartlett, whom he instructed in the work of organization and authorized to introduce the order in that part of the state. In Chicago he found a club ready to be organized into a grange. This was encouraging at the time, but the grange did not materialize. His next visit was to Madison, Wisconsin, where he had hoped for much, but met with complete failure. He reached St. Paul, Minn., May 1. On the way from Washington he had received dispensation or charter fees at Harrisburg, Fredonia, Columbus, and Chicago. He now received by mail an application for a dispensation from Newton, Iowa, enclosing 76 the required fee of fifteen dollars. These receipts paid the expenses of his trip, but the prospects of the order were not the brightest.

The farmers of Minnesota were at this time far more interested in protection against middlemen, corporations and monopolies, than in any plan for social or educational improvement. They had lost interest in the old agricultural societies and were ready for something new. The Farmers' Union, an agricultural monthly, which was started in Minneapolis in August, 1867, with a claimed circulation of ten thousand, immediately took up the farmers' cause. It recommended monthly township fairs, where farmers could meet to buy and sell to each other directly, without the aid of middlemen.302 It planned to protect the farmer against unscrupulous agents who practiced fraud and deception, and urged all who had been swindled to give information.303 The editor, Mr. Nimocks, was secretary of the Minnesota Farmers' Mutual Fire Insurance Association, and he made effective use of the columns of his paper in advertising the “Farmers' Association.” He gives the following account of its origin: “On the 15th of July, 1865, a number of farmers of this state assembled at Minneapolis and organized a club or association for the purpose of assisting one another when fires occur, or, in other words, do their own insuring and save a large amount of money and thus avoid being swindled by irresponsible insurance companies.…Each Farmer insured is a member, and has a voice in its affairs and a vote in the election of officers.”304

302 The Farmers' Union, Aug., 1867 (Vol. I, No. 1).

303 Ibid., Sept., 1867.

304 Ibid., Aug., 1867.

In November, 1867, the Farmers' Union began an active campaign for the organization of social farmers' clubs. It proposed to have in the field an able corps of associate editors and traveling correspondents, to assist in the establishment of such clubs in every neighborhood in the state for the benefit of farmers, their wives, and families.305 This plan was carried out during the winter, and, judging from the letters from farmers' clubs in different parts of the state, the farmers must have taken considerable interest in the work.

305 Ibid., Nov., 1867; Jan., 1868.

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When Mr. Kelley, on his return from Washington in May, 1868, began to work for his order, the Farmers' Union pronounced his plan of organization the most perfect that had ever been introduced, and recommended it heartily to the farmers of the state. It continued, however, for some time to work for the establishment of farmers' clubs as before. One effective argument for organization was the co-operative feature, whereby farmers would be enabled to purchase machinery, nursery stock, groceries, and other necessities, without the expensive services of retailers and commission men, who frequently were guilty of charging exorbitant prices. The success of the Farmers' Association in the field of insurance was pointed out as a proof of the practicability of co-operation, and the farmers were urged to apply this principle of co-operation in other fields.

It is not to be understood that the Farmers' Union was the cause of this great agitation among the farmers of Minnesota at this time. It merely offered the farmers a formula according to which it was believed they would be enabled in a large measure to improve their condition. The times were hard and the discontent was general throughout the state. This discontent was due partly to local conditions and partly to general causes. A general movement toward improved farming and improved farmers had been in progress for several decades in this country and in Europe. Where any material advance was made, a period of social and political re-adjustment, with its struggle and its discontent, necessarily followed.

The immediate causes for discontent, however, were more concrete. The farmers of the state blamed the railroads and the middlemen for the hard times, and later they added high taxes, high protective, tariff, and bad currency, to their list of grievances. Retailers and agents, as a rule, fixed a large margin of profit on goods sold. This practice was to some extent justified by the risk involved, for the farmers at that time seldom paid cash, and many of them were notoriously slow payers. Large profits on cash sales, and

good accounts, made up for possible losses on doubtful accounts. But when the farmers realized that high prices were in a large measure due to these large profits, they felt swindled and their ire was 78 aroused. Many irresponsible men did swindle them outright, thus adding fuel to the flame.

With the rapid extension of interstate railroad systems, the question of railroad regulation and railroad control had already in 1868 ceased to be merely a matter of local concern. In the second session of the fortieth Congress, the committee on roads and canals was instructed by the House to investigate whether Congress had the power, under the constitution, to provide by law for the regulation and control of railroads, especially those extending through the several states, so as to secure, first, the safety of the passengers; second, uniform and equitable rates of fare; third, uniform and equitable charges for the transportation of freight; fourth, proper connections with each other in the transportation of passengers and freight; and if, in the opinion of the committee, Congress possessed such powers, it was to report a bill which would secure these objects.306 The committee reported that in its judgment Congress had such power over railroads connecting two or more states, but that it had no constitutional power to legislate in relation to railroads which do not form parts of continuous lines extending from one state to another. The committee did not report any bill; for they were not in possession of much necessary information.307 Two members of the committee submitted a vigorous minority report.308

306 Congressional Globe, 1867–8, part 3, p. 2331.

307 40th Cong., 2d Session, House of Representatives, Report No. 47, pp. 1–8.

308 Ibid., pp. 8–20.

The need of railroad regulation was general, but the situation became most acute in the frontier states where imports and exports had to be transported great distances, and where discrimination seems to have been most flagrant. Communities and individuals discriminated against could justly complain of unreasonable charges, and when the

railroads insolently maintained their vested rights to fix charges to suit themselves the people did not find the “oppression” more tolerable.

Mr. Kelley immediately began his campaign for the new order. Believing thoroughly in publicity, he lost no time in enlisting the services of the press. The order was advertised as a national organization, making rapid progress in a number 79 of states, and now being introduced in Minnesota as a protective organization which would be of great benefit to its members.309 The headquarters of the order were in Washington, D. C., and its nine officers were from seven different states and the District of Columbia.310 The constitution of the order and its circulars were printed in the various newspapers of the state. In his monthly report to the National Grange, made August 1, 1868, Mr. Kelley says: “I can now report to you the friendly aid of five agricultural papers, whose columns are open to our cause, viz.: The Prairie Farmer, Chicago; Farmers' Chronicle, Columbus, Ohio; Ohio Farmer, Cleveland; Rural World, St. Louis; Farmers' Union, Minneapolis. Besides these the various daily and weekly papers in the state will publish any matter to advance our interests.”311

309 Sauk Rapids Sentinel, June 19, 1868.

310 Ibid., June 19, 1868.

311 Kelley, Origin and Progress of the Order of Patrons of Husbandry in the United States, p. 117.

Mr. Kelley availed himself of every opportunity to bring the order before the farmers. He attended a meeting of the executive committee of the State Agricultural Society held in June, 1868, and seems to have received encouragement from its members.312 He attended a horticultural fair in Minneapolis the first week in July and met many farmers. In a report of this fair which he sent to the Sauk Rapids Sentinel, he expresses his pleasure because of the interest which the officers of the state and county agricultural societies in Minnesota were taking in the new order. He optimistically estimated that according to

present prospects at least fifty granges would be represented at the coming State Fair.313 The editor of the Sauk Rapids Sentinel congratulated the Patrons upon the increase of their number since the first grange was organized in the state, and added: “They may well feel encouraged. The order is endorsed by the executive committee of our state agricultural society and by all the leading farmers who have become familiar with the order.”314 A month later he reported: “Granges of the Patrons of Husbandry are springing up in all

312 Ibid., p. 110.

313 Sauk Rapids Sentinel, July 10, 1868.

314 Ibid., July 17, 1868.

80 parts of the state. The farmers are looking after their interests, and every town should have a branch of this order.”315

315 Ibid., Aug. 21, 1868.

This was no doubt what Mr. Kelley wanted, but as a matter of fact the order was at the time meeting a rather cool reception. The farmers were not ready to join a secret society whose objects and purposes they were not familiar with. The circular did not give them sufficient definite information. They considered it too flowery and ambiguous. They had no need of a “mutual admiration society,” but wanted an association that would aid and protect them.316

316 Kelley, op. cit., p. 110.

In a letter to the officers of the National Grange, dated July 12, 1868, Mr. Kelley writes: “In the country the farmers ask, ‘What pecuniary benefit are we to gain by supporting the organization?’ Let the National Grange point it out, let it show that each Grange is of itself a Board of Trade, and by the system of communication between subordinate, state,

and National granges they can market their produce independent of the Chambers of Commerce, Millers' and Wool Growers' Associations, which are gotten up to control the market. …Ask them this question, ‘Why not the producer establish the price of his products as well as the manufacturer?’ Not to secure exorbitant demands, but to get a fair profit over the cost of raising the crops. No man can accumulate money who sells below cost. If you hit this point right, you will sweep the West. …Mark my word, there is a revolution going on among the people, and if you strike the right chord in a new circular letter, you will soon see the Patrons will be a power, and yourselves at the head of it.”317

317 Ibid., pp. 113–114.

During the summer two abortive attempts had been made at establishing subordinate granges. The first active grange in Minnesota was the North Star Grange which was organized in St. Paul, September 2. Col. D. A. Robertson, the leader in this grange, immediately set to work and revised the circular of the order, with the hearty approval of Mr. Kelley. The new circular was issued over the signature of O. H. Kelley, Secretary of the National Grange, and under the date, “National 81 Grange, Washington, D. C., Sept., 1868.” According to its statement, the objects of the order were to advance education, to elevate and dignify the occupation of the farmer, and to protect its members against the numerous combinations by which their interests are injuriously affected by means of combined co-operative association. The order was to provide systematic arrangements for procuring and disseminating information relative to crops, demand and supply, prices, markets and transportation throughout the country, and for the establishment of depots for the sale of products in the cities; also for the purchase and exchange of stock and seeds, for employment bureaus, for ascertaining the merits of newly invented farm implements, and for detecting and exposing those that were unworthy, and for protecting, by all available means, the farming interests from fraud and deception of every kind.318 On the new circular, embodying these with the former provisions, was based the real foundation of the order.319

318 Ibid., pp. 125–130; Sauk Rapids Sentinel, Oct. 2, 1868.

319 Kelley, op. cit., p. 130.

But even though the order trimmed its sails to the agitation among the farmers, its progress continued far from satisfactory. By the close of 1868 only four granges in Minnesota had paid their dispensation fees, and a fifth had been organized gratuitously. But Mr. Kelley continued the struggle, though at times “almost against hope.”320

320 Ibid., p. 151.

Beginning with the new year, prospects brightened. By February 20, six new granges had been added to the list, and on February 23, 1869, the Minnesota State Grange was duly organized,321 and continued its session two days. It was here suggested that the different subordinate granges should lease flouring mills in their respective localities and appoint a business agent at St. Paul, who was to receive the flour and ship it to New York, where it would be sold on commission.322 The executive committee accordingly appointed Mr. Prescott state agent. Mr. Kelley approved of this business feature, and began to look around for men of means to support the enterprise. The National Grange held its first annual session in Washington, 6

321 Ibid., p. 165.

322 Ibid., p. 168; Letter from O. H. K. to McDowell, March 1, 1869.

82 April 13. They here discarded the Minnesota state agency as premature.323 Every subordinate grange in Minnesota, however, approved of the plan, but held it to be a local matter which did not necessarily involve the order. Their immediate concern seems to have been to secure farm machinery at reduced rates. Mr. Kelley was glad to see something started, for, if the farmers could be brought to fight the retail dealers through the order, the order would be advertised throughout the state and nation. If the agency proved a success, the National Grange could adopt the plan. If it failed, all official connection with

it could be disclaimed.324 At the meeting of the National Grange held in Washington, January 25, 1870, Mr. Kelley could report a total of forty-nine granges, forty of which were in Minnesota. Iowa had three granges; Illinois had three; and Ohio, Pennsylvania, and New York, each one.325

323 Ibid., p. 180; Letter from O. H. K. to McDowell, April 17, 1869.

324 Ibid., pp. 186–7; Letter from O. H. K. to McDowell, May 4, 1869.

325 Ibid., p. 219; second Annual Report.

So far the Grange Patrons had been mainly interested in their fight with the middlemen. Many communities throughout the state were still without railroads, and were anxious to secure them at any cost. The agitation against railroad abuses had not yet taken any definite form. In Illinois the situation was different. The main railroad lines had already been built. Corn, their chief farm product, could not bear heavy transportation charges and discriminatory rates would be particularly oppressive. Hence it was not long before the farmers were engaged in a lively struggle with the railroads. The Prairie Farmer was instrumental in calling a convention of producers, to meet at Bloomington, Illinois, April 20, for the purpose “of devising means to combat the vast railroad monopolies that threaten to overwhelm the country.”326 Mr. Corbett, the editor of this paper, considered this the best opportunity that had ever been offered for the order of Patrons of Husbandry to make itself felt among the farmers, and therefore wrote to Mr. Kelley, inviting him to attend the convention and bring the order before them. He closed his letter with the following words: “You must be present fully prepared

326 Ibid., p. 245; cf. Periam, A History of the Origin, Aim and Progress of the Farmers' Movement, p. 225.

83 to make a telling appeal for the cause through the organization to which you have already devoted so much time and labor. You can do more for it here in a single day than in months in the usual manner. Please let me hear that you will be present."327

327 Kelley, op. cit., p. 245–6; W. W. Corbett to Kelley, April 11, 1870.

Mr. Kelley does not seem to have been prepared to incorporate anti-railroad agitation in the program of the order, and did not accept the invitation. The convention was attended by a large number of leading farmers from different parts of Illinois. Governor John M. Palmer sent a letter in which he expressed the hope that the convention would assert and prepare to maintain that there is no interest in this country that is or can be beyond the control of the law.328 A series of eight resolutions were drawn up in which it was declared: "First, that the present rates of taxation and transportation are unreasonable and oppressive and ought to be reduced; second that our legal rights to transportation and market ought to be clearly set forth and defined."329

328 Periam, op. cit., p. 228.

329 Ibid., p. 229.

On the thirteenth of May, 1870, a constitutional convention adopted a new constitution for the state of Illinois which was subsequently ratified by the people. This constitution reflects the influence of the farmers of the state by devoting seven sections to railroads,330 and another seven to warehouses.331 Railroads were declared public highways, and it was made the duty of the general assembly, from time to time, to pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads of the state,332 and to pass laws to correct abuses and prevent unjust discrimination and extortion in rates on the different railroads, and to enforce such laws by adequate penalties.333 These provisions led directly to the enactment of the so-called Granger laws of 1871 and 1874. When the constitutional convention met in May, 1870, there were two subordinate granges in the state, and when the legislature

330 Const. of Ill., 1870, Art. II, secs. 9–15.

331 Ibid., Art. 13.

332 Ibid., Art. II, sec. 12.

333 Kelley, op. cit., p. 269 and 271.

84 met in January, 1871, only one more had been organized. As an advertisement for the order, a temporary state grange was organized in Chicago in July, 1870;334 but it did not prove active and had to be reorganized in 1872, when granges began to get numerous.

334 Kelley, op. cit., pp. 269 and 271.

On May 20, 1870, Mr. Corbett wrote a letter to Mr. Kelley, in which he expressed his firm conviction that the order had a work to perform in the war that was about to be waged by the people against the monstrous monopolies. Said he: “Railroad Companies, Warehouse and Telegraph Companies, are crushing the life out of the producing classes. * * * * We know the claims of vested rights that Railroad Companies, in the West especially, lay claim to. A corporation on the plea of public interests, gets the right of way, condemns property—our very homesteads, perhaps; to do this they are public corporations, acting for the public good. The charter and right of way once gained, this public character ceases, and railroad companies are private institutions not amenable to Legislatures or Courts, because the legislature has given away its power to regulate them. They can extort, oppress, rob. They can discriminate in favor of certain localities and individuals; they can combine with owners of warehouses, or build warehouses of their own, and force shippers to pay toll on every bushel of grain that passes over their road; they can and do refuse to deliver grain or other produce, except to such persons or companies as may pay into their own coffers. * * * * * We, as Patrons of Husbandry, have united for common good and for common protection. * * * * We must not be political in the common acceptance of the term, only so far as to control politicians and office-holders, to make them talk, legislate,

and decide on the side of the people all the time, * * * * whichever party will declare itself to stand on our platform, and whichever candidate will unqualifiedly pledge himself to carry out the reforms we demand, such party and such candidates should receive our votes. * * * * * Opposition to monopolies seems to me to be entirely consistent with the design of our Order; with it as one of the watchwords, I believe we have the opportunity of extending our 85 Granges indefinitely throughout all these North-Western States."335

335 Kelley, op. cit., pp. 256–259; W. W. Corbett to Kelley.

This letter was read before the Minnesota state grange which met June 22, 1870, and it gave such general satisfaction that it was ordered printed for circulation.336 Mr. Kelley had some misgivings as to the result of such a war, but looked upon the publication of the letter as another way of bringing the order more prominently before the public.337 Definite expression was here given to the farmer for his grievances against the railroads. The agitation against railroads soon became as lively in Minnesota as in Illinois.

336 Ibid., p. 256.

337 Ibid., p. 259.

When the Minnesota state grange met in June, 1870, there were sixty-six subordinate granges in the United States, of which fifty were in Minnesota. The order had been advertised as national, and Mr. Kelley was anxious to make it such in fact as well as in name. The other officers of the National Grange had disappointed him by their inactivity. He decided to move to Washington and make that city his headquarters, believing that he could in this way exert a wider influence.338

338 Ibid., passim.

The services of a number of good men were enlisted in a number of states, and the order began to make a remarkable progress throughout the country. "Co-operation," and

"down with the monopolies," were proving popular catchwords. The growth of the order for several years was unprecedented. The number of granges organized each year for 1868 to 1874, inclusive, was as follows:339

339 Department of Agriculture, Special Report No. 2 (1883), p. 63.

State granges. Subordinate granges. Granges in Minn. (Total No.) 1868 0 10 5 1869 1 38 33 1870 2 36 19 1871 2 130 1872 8 1,105 1873 22 8,868 358 1874 4 11,941

It was with these figures in mind that Mr. Aitkin, an old Granger, said in an address before a convention of agriculturists 86 held at the Department of Agriculture in January, 1883: "From the Potomac to the Rio Grande, from the Golden State to the Hudson, and even into the pineries of Maine, and across the border, throughout the length and breadth of the Dominion of Canada, farmers fairly leaped, as with one pre-concerted bound, to the upholding of the Grange standard."

CHAPTER IX. THE CAMPAIGN FOR RAILROAD REGULATION IN 1870.

The discontent among the farmers of Minnesota was constantly increasing during the later sixties. They were not enjoying the prosperity they had looked for, and as the hard times continued they became more and more convinced that they were being exploited. In general they attributed their sorry plight to three main factors: the exorbitant charges of the middlemen, the financial policy of the national government, and the increasing power of corporations and monopolies, especially of the railroad companies.

When the legislature convened in 1870, Governor Austin in his inaugural address340 took occasion to examine the popular complaints against the management of the railroads within the state, and also to present as fairly as possible the railroads' side of the case. Realizing that the charges made by either side against the other might be neither wholly true nor wholly false, he advised that a commission be created to make full inquiry into the alleged abuses and to present some plan remedying the difficulties, if abuses be found to exist. He did not question the constitutional right of the legislature to regulate freight and

passenger tariffs, nor doubt the necessity of so doing, but he desired regulation based on accurate knowledge gained by careful investigation. “If the people are wronged,” he said, “it would be a short-sighted policy on the part of the companies to strive to perpetuate the wrong; for when the people can bear it no longer, they will arise in their might and find some means of redressing their grievances, and then there will be danger of injustice on the other side. If

340 Minn. Exec. Docs., 1869, Inaugural Address (25 pp.), Corporations, pp. 6–14.

87 the popular complaints are not well founded, a full impartial investigation will establish the fact, vindicate the corporations, and put the question forever at rest,—a result much to the advantage of all concerned.”341

341 Ibid., p. 14.

The governor's recommendation met with general approval among the people. A bill embodying its main features was introduced in the Senate and passed, but when the bill reached the House it was permitted to die of neglect.342

342 Ibid., 1870, Governor's Message, pp. 38–39.

The question of railroad regulation had not figured prominently in the preceding campaign, but in the campaign of 1870 it sprang into prominence in different parts of the state. The farmers in particular were aroused. As we have seen, the order of Patrons of Husbandry was proposed to them as a means of self-protection against railroads and monopolies, but its growth at this time was slow. It was not yet strong enough to exert the influence its friends expected of it.343

343 See Wabasha Weekly Herald, Sept. 15, 1870, p. 1, c. 3: “Now why don't this Order come up to its pretentions? * * * It is time the Patrons showed themselves equal to their undertaking.”

The anti-railroad sentiment was especially marked in the first congressional district, where the Winona and St. Peter railroad was very unpopular at the time. In the Republican convention of this district, held in Owatonna July 6, emphatic protests were made against railroad extortions, and the following declaration was embodied in their platform: "* * * the tendency toward consolidation of parallel or competing lines of roads, and of roads without competition from other roads or lines of water transportation, to exact extortionate rates of tariff for the transportation of freight, and to operate the corporations in the interests of jobbers, speculators and monopolies, without regard to the interests of the people, is dangerous to the commerce and industries of the country, and should be restrained and suppressed by the exercise of all powers over the subject delegated to Congress or retained to the state."344 In support of this plank in the platform, Governor Austin said in the convention: "I believe the masses of our state are beginning to suffer from the extortions and burdens

344 Minneapolis Daily Tribune, July 7, 1870, p. 1, c. 4.

88 imposed by merciless, greedy monopolies and soulless corporations, to an extent hardly equalled from all the taxes imposed by the combined general and state governments. To relieve them from these burdens will test the powers and resources of politicians and statesmen more severely than the old well-worn issues of the past. The wrongs aimed at in the resolution have rapidly grown in great proportions, and if necessary in order to correct them, we should seize them by the foretop and shake them over hell till they get a smell of their manifest destiny."345

345 St. Peter Tribune, Oct. 26, 1870, p. 2, c. 2.

It is not to be understood, however, that this was primarily an anti-railroad convention. The delegates were fully as interested in the tariff, and it must be considered a notable achievement that the discordant elements managed to agree on resolutions heartily endorsing President Grant and Congress, and at the same time urging the reduction of the tariff to a revenue standard.346 Mark H. Dunnell was nominated for Congress, pledged

to corporation control and tariff for revenue only. Republican county and senatorial district conventions endorsed this platform, and quite generally passed resolutions in favor of legislative railroad regulation.347

346 Minneapolis Daily Tribune, July 7, 1870, p. 1, c. 4, for party platform. See also St. Paul Daily Pioneer, July 7, 1870, p. 1, c. 4; July 9, p. 1, c. 1.

347 See Wabasha County Republican platform, Wabasha Weekly Herald, Oct. 6, 1870, p. 1, c. 4; 20th senatorial district Republican platform, The Wells Atlas (Faribault Co.), Oct. 14, 1870, p. 1, c. 3.

The Democrats of the first congressional district met in convention at Owatonna, September 15. Some of the county delegations were decidedly mixed. In Fillmore county, for instance, the delegates had been chosen in a “people's convention,” without regard to former political affiliation.348 There were quite a number who had hitherto regularly affiliated with the Republican party, who now refused to support Mr. Dunnell, contending that he was a monopolist and a politician.

348 Federal Union (Rochester), Sept. 17, 1870, p. 1, c. 3.

Though evidently many had looked for this to be distinctly an anti-monopoly convention, resolutions offered against monopolies and railroads were voted down and not included in 89 the platform.349 This may have been done to gain votes for their congressional candidate, Mr. Buck, in frontier counties where the people were still clamoring for railroads and favorable railroad legislation.

349 Rochester Post, Nov. 5, 1870, p. 2, c. 3; for platform see also Federal Union, Sept. 24, 1870, p. 4, c. 3; St. Paul Daily Pioneer, Sept. 16, p. 4, c. 2; and Sept. 17, p. 1, c. 2.

The Olmsted county Democratic convention, which met at Rochester, September 10, had shown itself more militant. A call had been issued to “all men, irrespective of past party

associations, who are in favor of taking the robbers by the throat."350 While nominally a Democratic convention, it was in reality a joint convention of Democrats, anti-monopolists, and "anti-tariffites." It was here resolved that the state legislature had the power and ought to fix the maximum rate of charges on all transportation lines in the state, and to regulate and control the consolidation of transportation companies. They agreed not to support any man for office who would not pledge himself to work faithfully for these principles and to bring about at once "such legislation as will protect farmers, merchants, tradesmen, and all other citizens of the state, from a repetition of intolerable and heartless swindles like those that have been and are now being perpetrated upon them by the management of the Winona and St. Peter railroad."351 All the candidates nominated in this convention, excepting one, were farmers, men who had "consistently opposed monopolies and protective tariffs for years."352

350 Federal Union (Rochester), Sept. 17, 1870, p. 4, c. 3–7.

351 Ibid., Sept. 17, 1870, p. 1, c. 4.

352 Ibid.

On September 12 a call was issued for an indignation meeting against the abuses of the Winona and St. Peter railroad company, and for considering the "propriety of contesting the legality of the present rates of tariffs in freights or securing some other relief from the oppression."353 The meeting was to be held at Rochester, September 16. This call was signed by thirty-seven men, of whom only six were Democrats. The Democrats felt aggrieved at this, and decided to capture the meeting.354 They thought it a device of the managers of the

353 Ibid., Sept. 24, 1870, p. 4, c. 4.

354 Ibid., Sept. 24, 1870, p. 1, c. 3.

90 Republican party for making political capital out of the anti-railroad sentiment of the community.355 When the Republicans found the Democrats ready to join them they held back. A Democrat was elected chairman and another secretary. The committee of five on resolutions was mainly Democratic. The resolutions offered and accepted at the meeting had been prepared beforehand by Mr. Jones, a Democratic candidate for state representative. These resolutions denounced the wheat rings and the excessive transportation charges, and demanded redress by the railroad company and the enactment of state laws to afford the people ample protection in the future.356

355 Rochester Post, Sept. 24, 1870, p. 3, c. 4.

356 Federal Union, Sept. 24, 1870, p. 4, c. 4.

Little or nothing came of this indignation meeting. One member of the committee appointed to report to the railroad company believed that the company had been punished enough already, and feared that the stirring up of popular feeling would lead to the destruction of property if not of life.357

357 Ibid., Dec. 10, 1870, p. 1, c. 3.

A dispute arose as to which party was entitled to credit for leadership in the anti-railroad crusade. The Democrats blamed the Republican party for the existence of the vexing problem, it having been in power continuously for ten years. The Republicans in turn pointed to the first congressional district platforms, in which they were openly pledged to railroad control, while the Democrats were not.358 They could also refer back to territorial days, when Democratic legislatures had granted the charters on which the railroad companies based their rights to manage their business in their own way without state interference.

358 See Address of the Rep. Congressional Committee to the voters of the First District, St. Charles Herald, Oct. 21, 1870, p. 2, c. 1–3.

In the first congressional district the anti-railroad sentiment ran high, but in the second it was not so marked. There the tariff question was of greater interest. For a long time it seemed as though the Republicans would be hopelessly divided, but when they finally met in convention in St. Paul, September 1, they agreed on a platform in which they, like the first district Republicans, endorsed President Grant and Congress, 91 and pledged themselves to the “sound and incontrovertible doctrine of tariff for revenue only.”359 The platform does not mention the railroads at all, save to commend the Northern Pacific and to recommend liberal national aid in its favor. General John T. Averill was nominated for Congress.

359 Minneapolis Daily Tribune, Sept. 2, 1870, p. 1, c. 1; platform, p. 2, c. 2 and 3.

Many Republicans of the second district were dissatisfied with the results of the convention, being pleased with neither candidate nor platform. Consequently a number of them, twenty-five hundred according to the St. Paul Pioneer, joined in signing a petition requesting Ignatius Donnelly to run as an independent candidate on a low tariff, labor and economy platform.360 The Democratic district convention, which met in St. Paul, September 15, endorsed his candidacy and platform.361 No definite stand was taken on the railroad question.

360 St. Paul Daily Pioneer, Sept. 14, 1870, p. 1, c. 2.

361 Ibid., Sept. 16, 1870, p. 1, c. 1, and p. 4, c. 2.

In the November election the Republicans elected both congressmen, though by a reduced majority, and made gains in the lower house of the state legislature. They elected thirty-three representatives, the Democrats twelve, and two were elected on independent tickets. The preceding House had contained twenty-eight Republicans and nineteen Democrats. The 1871 Senate, however, would contain twelve Republicans, eight

Democrats, and two Independents, as against fourteen Republicans and eight Democrats in 1870.362

362 Minneapolis Daily Tribune, Nov. 12, 1870, p. 1, c. 3.

The Federal Union of Rochester announced the results of the election under the following headlines: “The People Victorious! Monopolists Sentenced! Our Railroads must be managed in the interests of the Whole People, instead of being run to enrich Wheat Rings and other Speculators. The People have spoken! Their will must be obeyed! Death to all who dare betray them.”363 In that part of the state two anti-monopoly parties had been in the field, and the results of the election in many cases merely determined what men were to be permitted to carry out almost identical anti-monopoly pledges.

363 Federal Union, Nov. 12, 1870, p. 1, c. 3.

Popular interest in the railroad issue did not subside with the election. On November 12 the Federal Union issued a call for a convention: “To the people of the first congressional district, to those who are being fleeced annually by the extortions of the railroad monopolists and rings of speculators, to those who are willing to do their duty as citizens by lending their assistance and influence in honorable and proper efforts to procure the repeal of such legislation as is prejudicial to the public interests, and the enactment of such laws as will protect the people against the extortion of railroad companies and all other monopolies, including wheat rings.”364 The convention was to be held in Rochester, December 1. The people of the second congressional district were urged to hold a similar convention, and to co-operate in bringing to bear upon the state legislators “a force they cannot resist, and which will strengthen them in their efforts to carry out the objects we have in view.”365 Editors “without regard to partisan proclivities.” were called upon to help advance the movement. State senator-elect Hodge (Dem.) issued a fiery appeal to the people of Olmsted county: “* * * and now, without distinction of party, let us organize our

forces for the contest. A call has been made to meet in convention * * * for the purpose of taking counsel together and of devising ways and means whereby we may effectually, thoroughly and forever emancipate ourselves from a system of railway extortions that have become too galling and oppressive for a free people to endure."366

364 Ibid., p. 1, c. 7.

365 Ibid., p. 1, c. 7.

366 Ibid., Nov. 19, 1870, p. 4, c. 5; Letter dated Nov. 15, 1870.

At this convention the committee on resolutions presented the following grievances:

1. Railroad charges were exorbitant, and places were discriminated against. They showed that the Winona and St. Peter railroad company made the following charges for the transportation of wheat:

From Eyota to Winona, 38 miles 15c. per bushel.

From Rochester to Winona, 45 miles 15c. per bushel.

From Kasson to Winona, 58 miles 17c. per bushel.

From Owatonna to Winona, 92 miles 10c. per bushel

From Mankato to Winona, 150 miles 13c. per bushel.

They contended that if the rates from the two latter places to Winona were reasonable, the other rates must be exorbitant. They believed that the transportation charges should be reduced from twenty to fifty per cent or more.

2. The Winona and St. Peter railroad company discriminated in favor of certain associations or “rings,” to the ruin of local business men.

3. The railroad company had assumed authority to grade the grain and had permitted its employees to favor its “ring” patrons.

The convention passed resolutions calling for reasonable rates with no discrimination, and for a satisfactory elevator system not owned or controlled by the railroads. A committee of seven was constituted a permanent executive committee. A memorial to the state legislature was drawn up, urging the enactment of laws (1) compelling the railroads of the state to carry freight and passengers at fair, equitable, and reasonable rates; (2) to make unfair or partial discriminations by means of lower rates, drawbacks or rebates, criminal offences; (3) to forbid the railroad companies to own or operate elevators or to purchase grain for speculation.367

367 Ibid., Dec. 3, 1870, p. 1, c. 4–8; Proceedings of the Anti-Monopoly convention.

The farmers had at first been anxious to get elevators and warehouses on almost any terms. With a fluctuating market the storing of grain might not always prove profitable, and besides it was perhaps only a question of time when the farmers would build granaries and store their own grain.368 In order to meet the demands of the farmers, the railroad companies frequently made arrangements with certain persons or companies, who furnished facilities for receiving and storing grain and were given a certain “toll” on every bushel shipped at their station, or in other cases rebates, large enough to cover market fluctuations and ward off competition.369

368 Stickney, The Railway Problem, p. 22.

369 For contracts of this kind see Report of the Senate Committee to investigate the elevator monopoly on the St. Paul and Pacific in 1874, St. Paul Dispatch, Feb. 14, 1874. See also Rochester Post, Feb. 11, 1871.

To pay such tolls or rebates and still get a good price for transporting the grain, the railroad companies were practically 94 forced to make the regular rates quite high. These high transportation charges tended to lower the prices of farm products, and the farmers soon began to denounce the “wheat ring” in no uncertain terms.370

370 Stickney, The Railway Problem, p. 22.

The farmer fared little better when the elevators were owned and operated by the railroad companies. The farmer then felt himself at their mercy, both as to grading and transportation charges, and independent buyers were as effectually barred out as under the other system. The Winona and St. Peter railroad company in the summer of 1870 forced the farmers at Rochester to sell their wheat stored in the company's elevators at what was generally considered an unfavorable price. Under the pretext of having to rebuild and repair the elevators in Rochester, the company set a date at which the grain must be sold, or twelve cents a bushel per month storage, without responsibility for safekeeping, would be charged.371

371 Federal Union, Sept. 24, 1870, p. 1, c. 3.

The railroad companies also frequently gave a monopoly of the wood and coal supply in towns and cities to certain favored individuals or corporations. While this originally may have been intended to simplify a crude industry and to give better service to the consumer, the system soon proved oppressive and aroused the antagonism of many town people, enlisting their sympathies with the farmer. At times those who enjoyed these monopoly rights in hauling grain and fuel—in common parlance, the “rings”—became so powerful

that instead of continuing to receive rebates as a favor, they practically controlled the railroads and fixed their own rates by playing off one railroad against another.372

372 Stickney, The Railway Problem, p. 23.

The executive committee provided for in the Rochester convention, December 1, issued a call for a state convention to be held in St. Paul the first week of the following January. This convention did not prove a success. Farmers in different parts of the state had called meetings to elect delegates,373 but there seemed to be a general suspicion, based on certain developments

373 St. Paul Daily Dispatch, Dec. 27, 1870, p. 1, c. 1, quoting Mankato Union.

95 at the Rochester convention, that certain played-out politicians were trying to mount the reform wave and get back into political power.374 The regular Republicans opposed the convention strongly, and the Republican press gave it little or no support. Both Republicans and Democrats regarded it as a scheme for organizing a new independent Anti-Monopoly party.375

374 Ibid., Jan. 5, 1871, p. 1, c. 1.

375 Federal Union, Jan. 7, 1871, p. 1, c. 4; St. Paul Daily Dispatch, Jan. 5, 1871, p. 1, c. 1; Jan. 6, p. 1, c. 1.

The first session was adjourned to the following evening without any action or speeches, because of the small number present.376 At the regular session Mr. Donnelly made the principal address. He complimented Governor Austin on the fearless way in which he handled the railroads, but expressed lack of confidence in the legislature which had just convened. He did not believe that it would do anything to “relieve the people of the master monopoly that was closing its monster meshes around them.”377

376 St. Paul Daily Dispatch, Jan. 5, 1871, p. 1, c. 1.

377 Ibid., Jan. 6, 1871, p. 4, c. 1 and 2.

The convention adopted a series of anti-railroad resolutions, and authorized its president to appoint a committee of seven to call future conventions and to urge further organization throughout the state.378 This plan, which would inevitably have led to the organization of a new political party within the state, met with no popular favor and was for the time being abandoned.

378 Ibid., p. 4, c. 2.

CHAPTER X. RESTRICTIVE RAILROAD LEGISLATION IN 1871.

When the legislature met in January, 1871, the people of the state began to look with keen interest for the fulfillment of campaign pledges. “We wonder,” said the St. Paul Dispatch, “whether the blandishment of railroads, operating in the shape of passes, upon the members of the present legislature, will lead them to forget their first love, and the promises made the people during the late campaign. We shall look 96 with anxiety for a notice of the fact that the honorable member from—has introduced a bill regulating the rate of charges by railroad companies for passage and transportation.”379

379 St. Paul Daily Dispatch, Jan. 9, 1871.

Governor Austin in his message to the legislature again took up the railroad question and discussed it at length.380 Since his inaugural address his ideas concerning railroad regulation had become more definite. After further investigation he had come to the conclusion that the system of freight tariffs and elevator charges practised by some of the railroads was unjustifiable, extortionate and oppressive to the last degree. They destroyed wholesome competition (1) by their discrimination in favor of particular markets and lines of transportation, against private warehouses and buyers and shippers not in the “ring;” (2) by drawbacks and rebates, which enabled the favored speculator to manipulate to market

to the injury of both consumer and producer; (3) by the establishment of arbitrary grades of grain and classes of freight.381

380 Minn. Exec. Does., 1870, Governor's Message, pp. 38–55.

381 Ibid., p. 39.

To remedy these evils the governor recommended that the following measures be adopted by constitutional enactment and appropriate legislation:382

382 Ibid., pp. 53–55.

1. All existing special railroad charters not in operation within a specified time were to be declared void.383

383 Cf. Const. of Ill. (adopted in convention May 13, 1870), Art, XI, sec. 2.

2. Every railroad company doing business within the state to maintain an office in the state, where certain records were to be kept for public inspection.384

384 Ibid., sec. 9.

3. No parallel or competing lines of railroad to be permitted to consolidate.385

385 Ibid., sec. 11.

4. All railroads to be declared public highways free to all for transportation under regulations prescribed by law, including maximum reasonable charges.386

386 Ibid., sec. 12.

5. No stocks or bonds to be issued except for money, labor, 97 or property actually received and applied to the purpose for which the corporation was created; all fictitious increase of capital stock or indebtedness void.387

387 Ibid., sec. 13.

6. The state's right of eminent domain to apply to railroad property and franchises in the same way as to other property.388

388 Ibid., sec. 14.

7. Laws for the correction of abuses and the prevention of unjust discrimination and extortion to be enforced by adequate penalties, involving, if necessary, forfeiture of property and franchises.389

389 Ibid., sec. 15.

Public warehouses were also to be defined and similar provisions applied to them.390

390 Ibid., Art. XIII; Warehouses.

These seven propositions were taken almost verbatim from the constitution of Illinois adopted May 13, 1870.

Among the legislators many were “breathing dire threatenings” against the railroads. One of the leading newspapers of the time says: “Almost every other member has a bill or resolution or scheme to launch upon the subject, and it promises to be one of the leading topics this winter.”391 The Rochester Board of Trade presented to the legislature a memorial relating to alleged extortionate freight charges of the Winona and St. Peter railroad company.392 Two thousand citizens of Olmsted, Winona and Fillmore counties petitioned for the enactment of a law compelling the railroad companies of the state to carry freight and passengers at equitable and reasonable rates.393

391 St. Paul Daily Dispatch, Jan. 18, 1871, p. 2, c. 1.

392 House Journal, 1871, p. 52.

393 Ibid., p. 52.

The anti-monopoly element was strong within the legislature, and strong pressure was brought to bear from the outside. But it is quite apparent that the railroad interests were not without representation and influence. A bill which provided for the apportionment of the internal improvement lands of the state among the different railroad companies was skilfully engineered through both houses of the legislature, meeting practically no opposition. This “Land Grab” bill failed 7 98 to become a law only because of the governor's veto and his unsparing exposure of its questionable character.394

394 See foregoing Chapter IV, p. 42.

Early in the session the Hastings and Dakota railroad company applied for an extension of time for the completion of its road and soon found itself in hot water.395 It was charged that the large stockholders had gobbled up the smaller ones and issued to themselves preferred stock which rendered utterly worthless the common stock held by the original Hastings stockholders.396 The city of Hastings had given a liberal bonus to the railroad company, but found itself discriminated against. Shakopee also was in arms. The legislature had required the company to run its line of road through Shakopee; but as there was a township as well as a city named Shakopee, the railroad company insisted that it could satisfy the legal requirements by passing through Shakopee township. Senator MacDonald, however, managed to introduce and rush through both houses of the legislature a bill changing the name of Shakopee township to Jackson.397 It was believed that this measure would compel the company to pass its line through the city of Shakopee.

395 St. Paul Daily Dispatch, Jan. 24, 1871, p. 1, c. 2.

396 Ibid., Jan. 20, 1871, p. 4, c. 1.

397 Ibid., Jan. 24, 1871, p. 1, c. 2: Special Laws, 1871, ch. 91, p. 395.

The railroad company found it expedient to make concessions. Arrangements were made whereby its old stock was placed upon an equality with the new preferred stock. Practically all opposition now vanished, and a bill was passed granting the desired time extension.398

398 Special Laws, ch. 63.

In the later sixties a number of railroad enactments had reserved to the legislature the "right to regulate the price of freight and fare." When a similar provision was inserted in a proposed amendment to the Minnesota Western charter, it was violently attacked by some of the anti-monopolists. Mr. Jones of Olmsted county strongly insisted that this right existed independently of such express provision, and contended that if inserted it would virtually concede that the right depended on its insertion and would thus place the friends of 99 legislative control in a false light.399 The provision was finally omitted.400 Formerly it had been regarded as a safeguard of the rights of the people, but in this session it was characterized as stale, flat and unprofitable, ancient and worn out.

399 St. Paul Daily Dispatch, Feb. 1, 1871, p. 4, c. 5; practically so held later (1876) in Winona and St. Peter Railroad Company vs. Blake, 94 U. S., 180.

400 See Special Laws, 1871, ch. 71, p. 278.

But, strangely enough, the legislature made use of another provision to secure reasonable rates and service without discrimination. A number of enactments gave certain railroad companies special privileges or grants on the express condition that proper connections should be made at points of intersection with other railroads, and that freight should be received at such junctions and transported at rates not exceeding the lowest rates charged on any portion of their lines for corresponding distances, and not to exceed the lowest

average rate of the railroads of the state for similar distances; cars of connecting railroads were to be transported at rates allowed by common usage for exchange of car service from time to time; no discrimination was to be made in favor of or against any locality, person, or connecting railroad.401 One would have expected this legislature to pass a general law to this effect, rather than to revert to the old practice of attempted general legislation by uniform special enactments.

401 Special Laws of Minn., 1871, ch. 63, sec. 3; ch. 64, sec. 3; ch. 66, sec. 5; ch. 67, sec. 2; ch. 70, sec. 2; ch. 71, sec. 2.

Formerly territorial charters had at times been revived and continued in an amended form, thus evading the general incorporation law. The legislature of 1871 passed a similar act, but it was promptly vetoed by the governor, who refused to sanction the revival of an old territorial charter402 under which the incorporators could claim exemption from effective state control.403

402 That of No. 9, Special Laws, 1856, ch. 159.

403 St. Paul Daily Dispatch, March 7, 1871, p. 4, c. 6.

Governor Austin was fearless in his use of the veto power, and proved himself faithful to his campaign pledges. Though the legislature might waver and pass laws under questionable influence, the people found that they could depend on their governor to do what he believed to be right.

It was not until the legislature had been in session for some time that the Senate proposed a joint committee to investigate the alleged railroad abuses. By joint resolution this committee, to be composed of three members from the Senate and five from the House, was to investigate and report to the legislature then in session on the following points:

1. The amount and probable value of lands held by the railroads for other than railroad purposes.

2. The amount and probable value of all other real property so held.

3. The amount and probable value of all personal property so held.

4. The annual gross earnings and necessary operating expenses.

5. The rates charged for freight, passenger, and elevator service.

6. The number of acres sold or contracted to be sold, and the average price per acre.

7. The cost per mile of construction and maintenance of railroads.

8. Whether there is any discrimination against individuals or localities.

9. All other facts the committee may deem proper and necessary information for the legislature.

In making its investigations the committee was given full power to send for persons and papers.404

404 St. Paul Daily Press, Feb. 16, 1871, p. 1, c. 1; Committee Report.

It was impossible for them to investigate and report on the whole field assigned them in so short a time; and so, contrary to the expectation of those who did not wish for any particular results, they devoted most of their time to hearing the testimony of those who claimed to have suffered wrongs, and instituted an investigation for their benefit. Six railroad companies were investigated.405

405 Namely, St. Paul and Pacific, Milwaukee and St. Paul, Lake Superior and Mississippi, St. Paul and Sioux City, Winona and St. Peter, and Southern Minnesota railroad companies.

The testimony taken in regard to the Winona and St. Peter railroad company went to show that there were discriminations in favor of individuals and of certain points along the line, and 101 that the management of its railroads was exasperating to the farmers and ruinous to independent wheat dealers. The “rings” were given special rebates. One member of such a “ring” testified that he was charged a net twelve cents per bushel when the regular rate was fifteen cents, but he tried to justify the system by claiming that he gave the farmers the benefit of the rebate. A miller and buyer likewise testified that the policy was injurious to the other buyers but was a benefit to the producers. The Winona and St. Peter railroad company owned most of the elevators along its lines.

Several witnesses were examined with reference to the St. Paul and Sioux City railroad company, but nothing was elicited to sustain any charges of discrimination in rates or of unfair management of its elevators. The company owned and controlled the elevators along its line and made no elevator charges.

On the St. Paul and Pacific the elevators were owned by individuals or corporations with whom the railroad company had special contracts, giving them exclusive rights and allowing them from two to three cents a bushel for handling the grain. This railroad company also carried wood much cheaper for parties with whom they had special contracts, which virtually prevented others from shipping wood over their lines. There were also complaints against the freight charges of this railroad company. One man testified that he found it cheaper to haul his flour from Minnetonka City to Minneapolis in winter than to ship it by rail. A merchant in Anoka testified that he hauled his goods from Minneapolis by team when purchased in considerable quantities.

The committee agreed with Governor Austin in regarding competition an insufficient remedy for railroad abuses. In the first place only points of intersection and places near by would be benefited, and secondly the “tendency toward consolidation and confederation is almost sure to bring lines built as competing under one management or an agreed uniform scale of rates, that extinguishes all competition and in the long run compels the people to expend in overcharges all and more than has been saved from cheap rates in times of the most active rivalry.”

102

The committee called attention to the fact that there was no longer in any one state an independent railroad system. Minnesota farmers were vitally affected by the combination of New York and Pennsylvania railroads that had previously been competitors.406 “It is clear,” says the committee in its report, “that state lines have been obliterated by this process, that in very many instances the power which it is desired to control exists and operates beyond the jurisdiction of the state.” The committee had realized this quite forcibly when they came to investigate the Minnesota Central, for they found that it had passed under the control of a Wisconsin corporation, and its officers were therefore beyond the limits of the state and not subject to their subpoena.

406 St. Paul Dispatch, Dec. 22, 1870, p. 1, c. 4, and Dec. 29, 1870, p. 4, c. 5, tell of pools formed by Eastern trunk lines, after which rates on Western bound freights were raised ten per cent.

The committee had found a disposition among many to believe that the railroad problem could only be solved by the federal government in the exercise of its constitutional power to regulate commerce among the different states.407 This had been proposed repeatedly in the preceding campaign, especially by speakers on the Republican stump.408 The committee, however, regarded this as a source of relief which should not be sought until all other means were exhausted.

407 See Winona county Republican platform, St. Charles Herald, Oct. 21, 1870, p. 2, c. 1.

408 For instance, Mr. Stearns; Rochester Post, Nov. 5, 1870, p. 2, c. 3.

As a partial remedy for the grievances complained of, and, if possible, to prevent the recurrence of such grievances, the committee recommended that a railroad commissioner be appointed; and they reported favorably on a Senate bill providing for the appointment of such a commissioner and prescribing his duties. They further recommended the enactment of a law regulating the freight and passenger tariffs on all the railroads of the state. The report of the committee was laid before the senate February 15; and five thousand copies of the report, including all evidence and statistics gathered, were ordered printed for the use of the legislature.409

409 House Journal, 1871, p. 166.

The St. Paul Daily Press comments on this report: “The 103 report is rather a statement of facts, or rather of the testimony elicited by the investigation, than of conclusions founded upon evidence, which in fact formed no part of the duties of the committee.”410 The Minneapolis Tribune did not consider the report worth the paper on which it was written, because too little time had been given for a thorough investigation, and expressed the hope that the legislature would not stultify itself by attempting to pass such a bill during the short remnant of that session, because both time and material were wanting and any hasty legislation on such an important and intricate matter would be sure to be many times worse than nothing.411

410 St. Paul D'aily Press, Feb. 16, 1871, p. 1, c. 3.

411 Minneapolis Daily Tribune, Feb. 17, 1871, p. 1, c. 2.

Many who sincerely favored a thorough-going reform realized the need of more time in which to grapple with the complicated problem. A number were in favor of appointing a

temporary board of railroad commissioners to continue investigations and report their conclusions to the next legislature. Others, however, were anxious for immediate action. Their constituents were clamoring for legislation. To them this procrastination was a clear indication that their representatives were being won over by the “monopolists.” Said the Owatonna Journal: “Do those legislators who left the people brim full of virtuous indignation at these things, who went breathing out ‘threatenings and slaughter’ against the perpetrators of the wrongs they suffer, whose indignation has been turned to reconciliation and whose threatenings have been changed to gentle cooing of sucking doves, hope to come back to their constituents with honeyed words and ingeniously constructed lies, to palliate this offense of confidence violated, sacred trust betrayed and hope deferred, while aiding the riveting still tighter the chains and adding to the power by which they are held in bondage to these corporations which are sapping the life-blood of the people to enrich themselves?”412

412 Owatonna Journal, Feb. 9, 1871, p. 2, c. 1.

The legislature finally passed an act creating the office of railroad commissioner.413 This commissioner was authorized to investigate railroads and their operations, their pecuniary condition and financial management, and to report annually to

413 General Laws, 1871, ch. 22; approved Mch. 4, 1871.

 the legislature. That the commissioner might be enabled to perform these duties, it was made a felony for officers of railroad companies to neglect sending in annual reports in such form and at such a time as the commissioner might prescribe. It was likewise made a felony for any one to wilfully obstruct, hinder and impede the commissioner in the performance of his duties. He was empowered to issue subpoenas, administer oaths and compel obedience in the same manner as would a court of law. All the books, papers and documents of railroad companies were to be open to his inspection.

This act can hardly be called a Granger law. The railroad commission or commissioner idea did not originate in the so-called Granger states. It had been adopted in a number of states for different purposes.

The general assembly in Rhode Island in 1839 passed an act to establish railroad commissioners.414 According to the provisions of this act, the general assembly was to appoint a board of railroad commissioners consisting of not less than three members. It was the duty of this board upon complaint or otherwise to examine into the transactions and proceedings of any railroad corporation in order to secure to all citizens of the state the full and equal privileges of the transportation of persons and property at all times, that might be granted directly or indirectly by any such corporation to the citizens of other states, and "ratiably in proportion to the distance any such persons or property may be transported on any railroad as aforesaid." The board was given full power to send for persons and papers and to examine under oath. It was required to report as often as twice a year to the general assembly on such matters as public interest might require.

414 Public Laws of Rhode Island, 1839–40, p. 1087; act of June 14, 1839.

In 1844 New Hampshire passed "An act to render railroad corporations public in certain cases and constituting a board of Railroad Commissioners." This commission was authorized to investigate and report on the public utility of proposed railroads. Where expropriation rights were granted, the commission, in conjunction with the road commissioners in the 105 different counties, would assess the damage done to private property.415

415 Laws of N. H., Nov. session, 1844, ch. 128.

In 1853 the Connecticut legislature passed an act "to prevent injuries and the destruction of life upon railroads and railroad trains," which provided for an appointive railroad commission. This commission was given only investigating and advisory powers.416

416 Public Laws of Conn., 1853, ch. 74.

Two years later New York established a board of three railroad commissioners to consist of the state engineer and surveyor, ex officio, one person to be selected by the stock and bondholders of all the railroads, and the third to be appointed by the governor. The board was authorized to report to the attorney general illegal acts and irregularities on the part of the railroad corporations. In their regular reports to the legislature, they were to suggest additional legislation to secure to the public greater safety and benefit in the use of the railroads.417

417 Laws of N. Y., 1855, ch. 526.

In 1858 Maine enacted a law “to secure the safety and convenience of travelers on railroads.” An appointive railroad commission was established, whose main duty was to examine into the condition of the railroads, their rolling stock, speed of trains, time tables, rates, and connections.418

418 Public Laws of Maine, 1858, ch. 36.

Ohio had all along been taking an advanced position in the line of railroad regulation. In 1867 the legislature of Ohio passed an act “to provide for the appointment of a commissioner of railroads and telegraphs, and to prescribe his duties.”419 The commissioner was authorized to investigate complaints and prosecute all violations of any of the laws relating to railways, to examine into the condition of railroads, and to order repairs when necessary. Detailed reports were required of the railroad companies, and the commissioner in turn was directed to report annually to the governor.

419 Laws of Ohio, vol. 64, 1867, p. 111.

In 1869 Massachusetts established an appointive board of railroad commissioners to have general supervision of all railroads within the state. Their powers were in the main

106 advisory.420 Section twelve of the Minnesota act requiring the investigation of accidents resulting in personal injury or loss of life is verbatim like section fourteen of the Massachusetts law.

420 Laws of Mass., 1869, ch. 408.

The law which evidently served as a model for the Minnesota act, however, was that passed by the legislature of Vermont in 1855,421 most of it being verbatim the same. The chief differences are that in Vermont the railroad commissioner was to be appointed by the judges of the supreme court, while in Minnesota he was to be appointed by the governor. In both cases the salary was to be paid out of the state treasury, but in Vermont the salary and expenses were to be apportioned among the railroad companies in proportion to the expense incurred and the time spent on each. The penalties provided for in the Minnesota act are more stringent than those of its model.

421 Public Acts of Vermont, 1855, No. 26.

The real Granger law of this session was passed shortly before adjournment,—the so-called Jones Railroad Bill.422 This was an act to regulate the carrying of freight and passengers on all railroads in Minnesota, and it passed both Houses by a large majority. In the Senate only four voted against it.423 By this act freight was classified, and maximum legal freight charges were fixed as follows:424

422 General Laws of Minn., 1871, ch. 24, approved March 6, 1871.

423 St. Paul Daily Pioneer, March 2, 1871, p. 1, c. 1.

424 General Laws of Minn., 1871, ch. 24, sec. 1, summarized and tabulated.

CLASSES OF FREIGHT. 20 miles or less. 20–50 miles. 50–100 miles. Over 100 miles. Less than carload lots 1 All kinds of grain, potatoes, flour, meal, beef, pork, and meats of all kinds. 6c per ton mile, car load lots. 5c per ton per mile. 4c per ton per mile. 3½c per ton per mile. 20% more. 2. Sawed timber, lumber, lath, shingles, coal, and salt. $10 per

car load of 20,000 lbs. 18c extra per car load per mile. 13c extra. 11c extra. 20% more 3. Dry goods and other mdse., usually called first class. 25% more than Class 1. 4. Sugar in barrels and fourth class freight. Same rates as Class 1. 5. Wood, less than 35 miles, $9.00 per car load of not less than 6 cords. 35–60 miles, 18c extra per car load per mile. 60 miles and over, 13c extra per car load per mile.

The railroad companies were authorized to charge five cents 107 a mile for carrying passengers.425 These charges for freight and passenger service were declared to be the maximum of reasonable rates.426

425 Ibid., sec. 2.

426 Ibid., sec. 9.

Under the general railroad incorporation law of 1858427 and the General Statutes of 1866,428 railroads were permitted to charge only a maximum of three cents a mile for passengers, and five cents per ton-mile for freight transported thirty miles or more. These provisions had been repealed in 1869, and railroads incorporated under the general law were permitted to charge such reasonable rates as might from time to time be fixed by the corporation or prescribed by law.429

427 General Laws of Minn., 1858, ch. 70, sec. 12.

428 General Statutes of Minn., Revision, 1866, ch. 34, title I, sec. 35.

429 General Laws of Minn., 1869, ch. 78, secs. 2 and 3.

All railroads in the state without exception were by the new law declared to be public highways, and therefore all persons had the right to service at reasonable rates.430 No additional charges were allowed for handling, transferring or storing freight, excepting a reasonable storage charge on all freights kept for a longer period than two days after notice had been given the consignee.431 When freight was carried over two or more lines,

the rates were to be the same as would have been charged if the goods were carried over only one line.432

430 General Laws of Minn., 1871, ch. 24, sec. 8.

431 Ibid., sec. 8.

432 Ibid., sec. 6.

It was made the duty of all railroad companies in the state to receive all kinds of freight at any depot or station, whatever brought for transportation, and to provide suitable places for the reception and storage of such freight.433 Equal facilities for shipment were to be furnished all shippers,434 and all freight to be transported without discrimination within a reasonable time and in the order received.435 No discrimination in favor of any warehouse or elevator was allowed;436 and if freight were carried for any one at less than the maximum

433 Ibid., sec. 4.

434 Ibid., sec. 4.

435 Ibid., sec. 7.

436 Ibid., sec. 4.

108 legal rates, the railroad company was obliged to transport freights of the same description for all other persons at the same reduced rates during the time such discrimination was in force.437

437 Ibid., sec. 7.

If any railroad company failed to comply with any of the requirements of this act, the aggrieved party was entitled to one thousand dollars damages to be recovered in civil

action, the company paying the costs.438 Besides this, demanding or receiving higher rates than the legal maximum rates was to be deemed a misuser of charter powers; and, on receiving proper evidence, the attorney general must proceed against the railroad company for the forfeiture of its charter and franchises, or for the collection of a fine not exceeding one thousand dollars for each violation of the provisions of the act, at the discretion of the court trying the case.439

438 Ibid., sec. 8.

439 Ibid., sec. 9.

The evident intent of the act was to prevent discrimination of all kinds against which the people had risen in revolt. If all railroads were public highways and all railroad companies common carriers, it followed as a corollary, in the minds of the legislators, that they had a legal right to prescribe rates for all. Disregarding the Dartmouth College decision, the legislature asserted its authority to determine what was the maximum of legal rates for all railroads, without making any distinction between those organized under special law and those incorporated under the general incorporation law. This is the radical departure from previous legislation, and it stamps the act under discussion as a Granger law.

We have already referred to the main provision concerning railroads embodied in the Illinois constitution of 1870. It had there been considered necessary, or at least expedient, to authorize the legislature to fix maximum legal rates for all railroads.440 Michigan had in the same year amended its constitution441 so as to give its legislature this power442 and to

440 Const. of Ills. (1870), Art, XI, sec. 12.

441 Laws of Mich., 1870, Extra session, Joint Res. No. 1, proposed amends.

442 Const. of Mich., Art. 19A, Of Railroads, sec. 1.

109 prohibit the consolidation of parallel and competing lines.443 Governor Austin, as we have seen, recommended “constitutional enactment and appropriate legislation” to the legislature of Minnesota, but this body was convinced of its powers to regulate railroad rates on common law principles, without express constitutional authority. In this respect it was more radical than the Grangers of Illinois and Michigan.

443 Ibid., sec. 2.

The people of Minnesota had failed in their attempt to legislate railroads into existence, and they likewise encountered difficulty in legislating them into submission. Under the circumstances, a law satisfactory to all parties would have been inconceivable. Before the passage of the Jones Railroad Bill, the Owatonna Journal characterized it as an incongruous, blundering affair, which looked very much as though some one other than a friend of real progress had figured in its construction.444 On the other hand, the Federal Union (Rochester), another railroad reform paper, expressed confidence in the new law and considered its enactment the fulfilment of the pledge of the democracy of Olmsted county.445 The St. Paul Daily Pioneer commented on the enactment of the new law in the following words: “The bill known as the Jones Railroad Bill to regulate the rates for carrying freight and passengers by railroads in this state went through the senate with a rush, only four senators having the nerve to vote against it.”446 As a rule, the newspapers of the state had very little to say about the new law.

444 Owatonna Journal, March 2, 1871, p. 2, c. 2.

445 Federal Union, March 11, 1871, p. 5, c. 3.

446 St. Paul Daily Pioneer, March 2, 1871, p. 1, c. 1.

In his first communication to the legislature, the railroad commissioner, A. J. Edgerton, reported that the railroads without exception had refused to comply with the law,447 but

contended that there could be no doubt that the legislation had been beneficial, because, directly or indirectly, it had caused a great reduction in the price of transportation.448

447 Railroad Commissioner's Report, 1871, p. 10.

448 Ibid., p. 28.

It was not long before a case was brought before the courts to test the constitutionality of the law. John D. Blake and 110 others brought action against the Winona and St. Peter railroad company in the district court for Olmsted county, for refusal on the part of the defendant to deliver certain freight on tender of payment according to rates fixed by law. The court decided in favor of the defendant, holding that the legislature had no constitutional power to fix rates.449

449 See Blake et al. vs. The Winona and St. Peter Railroad Company, 19 Minn., 418, 419, and 420.

The case was appealed to the state supreme court, which reversed the decision of the lower court, holding that the act of 1871 was valid, operative, and applicable to the defendant in this case. In the first place, the law did not impair the obligation of a contract with the defendant, for the state had never expressly granted to the defendant the right to charge any toll for freight or passengers carried over its road, and its right to demand compensation would depend upon the language of its charter, and not upon the rules of common law. The court, assuming that the right to take some toll existed by necessary implication, believed that this right could be exercised to its full extent under a law fixing a maximum rate. Secondly, the law in question was not a usurpation of judicial authority by the legislature, for while the legislature represents the sovereign as a party contracting with the defendant, it also, in the capacity of sole law-making power, acts for the sovereign in exercising the sovereign right of control over franchises in the hands of the subject.450

450 19 Minn., 418, (October term, 1872); note pp. 428 and 429 in particular; see also State vs. Railroad Company, 19 Minn., 434; Nation, vol. 17, p. 266.

The railroad company appealed to the federal supreme court, and the case was numbered among the Granger cases.451 This court did not base its decision on a strict construction of the charter rights of the company, as had the state supreme court; but, following the principles laid down in Munn vs. Illinois, held that state legislatures had the right under the constitution to regulate intra-state railroad rates, and to provide penalties for violations. This decision was rendered in 1876, some time after the Granger movement had subsided. The state had not pressed its claims against any of the other

451 94 U. S., 180; Winona and St. Peter Railroad Company vs. Blake.

111 railroads; and when the final verdict was given Minnesota had already changed her railroad laws twice since the enactment of the law of 1871, the constitutionality of which was upheld.

CHAPTER XI. RAILROAD LEGISLATION IN 1872 AND 1873.

In his message to the legislature which met in January, 1872, Governor Austin characterized the law prescribing maximum legal freight and passenger rates as crude and ill-considered in many of its provisions, affording but little protection to the agricultural interests of the state. He recommended a careful revision. But notwithstanding its imperfections and the fact that the railroad companies had professed to disregard it, he felt convinced that it had, in no small degree, modified their charges and thus saved to the people no inconsiderable sum. He commended the work of the railroad commissioner very highly, and approved of his recommendations.452

452 Minn. Exec. Docs., 1871, vol. I, pp. 17 and 18.

The legislature of 1871, as we have seen, created the office of railroad commissioner, but it had neglected to make appropriations for his salary and necessary expenses. It

was feared at the time by many friends of reform that the act might for this reason fail to become operative.453 But General Edgerton, Governor Austin's appointee, immediately entered upon his duties and the following legislature made the expected appropriation454 and provided him with a contingent fund for the year 1872.455 The office was not to perish for want of funds.

453 Rochester Post, March 11, 1871, p. 2, c. 4.

454 General Laws of Minn., 1872, ch. 110. See Governor's Message, p. 18, Minn. Exec. Docs., 1871, vol. I.

455 General Laws of Minn., 1872, ch. 100.

The report of the railroad commissioner, made directly to the legislature as required by law, shows plainly that he realized the responsibility of his position, and that, while thoroughly in sympathy with the movement for railroad regulation, he wished to conduct his investigations impartially and reach conclusions supported by facts.

As to infringement of the laws, he reported, as we already 112 have noted, that the railroads had all refused to conform to the maximum freight and passenger rates prescribed by the new railroad law, and that the attorney general had commenced action to test the validity of this form of legislation.456

456 Ry. Commissioner's Report, 1871, pp. 10 and 11.

He had not yet had time to make a thorough inspection of the different roads, as was contemplated by the law, but from what he had learned he could report that the different railroads were very generally improving the condition of their roads.457

457 Ibid., pp. 11 and 12.

In discussing land grants made to railroads, he takes up different companies and estimates the value of the land grants and the local aid rendered them.458 He reaches the conclusion that the different railroads of the state had received from the public no less than fifty or sixty million dollars, which he regards as given in trust that the state may be developed and that its mineral, agricultural and other productions and manufactures may be transported to market on equal and reasonable terms.459

458 Ibid., pp. 12–16.

459 Ibid., p. 39; see Const. of Minn., Art, X, sec. 4.

Great complaint had been made against the Winona and St. Peter railroad company for making unjust discriminations against certain places.460 The commissioner entertained serious doubts as to the effectiveness of unregulated competition as a remedy for such abuses. He believed that fair and just rates from all places should be established by law. Then, whenever the railroads cut rates to break down competition, they would have to do so at their own expense and not at the expense of producers residing at a distance from the competitive points.461 He was not prepared to subscribe to the radical position taken by certain members of the Illinois constitutional convention that the “right to regulate and prescribe the terms of the use of that which has been taken and is held for the public use” can never be irrevocably surrendered by the legislature to any board of directors, but he presented their arguments and admitted that they had much force.462 He believed, however, that the time would soon come when the

460 Ibid., p. 17.

461 Ibid., p. 20.

462 Ibid., pp. 32–36.

113 principle would be recognized that the public as well as the railroad corporations have “vested rights;” and that, if such unreasonable rates are charged, or such discriminations

made, as would obstruct the necessary commerce, or paralyze the various industries of the state, it is as much the duty of the legislature to interfere and remove such unjust obstructions as it is the duty of a court to abate a nuisance.463

463 Ibid., pp. 39–40.

There was some doubt as to the power of the legislature to prescribe rates for all the railroads of the state until the courts had decided certain pending cases. But four of the principal railroads had charters which expressly provided that freight and passengers should be transported at reasonable rates. The commissioner believed that, if the legislature amended the charters of these roads and placed them under just and wholesome restrictions, of which there could be no doubt it had the power, the whole question would be settled; for, when these roads were compelled to adopt reasonable rates and cease unjust discriminations, the other roads would have to fall in line.464

464 Ibid., pp. 36–37.

Railroad lands were exempt from taxation until sold or contracted to be sold. In many counties the amount of land thus held by the railroads was very large, and consequently the burden of taxation fell heavily on the settlers and became the cause of much complaint and ill-feeling. The commissioner found that in a number of cases much railroad land had been contracted away, but on such terms that the title remained with the railroad company. These lands, therefore, were not listed for taxation. One company had sold its roadbed and equipments, but kept its land grant and claimed exemption from taxation. The commissioner recommended that every means should be used to make these lands subject to taxation as soon as contemplated by the laws exempting them.465

465 Ibid., pp. 21–25.

Railroad companies were to pay a certain annual tax or per centum of their gross earnings. In the past no direct provision had been made for an examination into the

correctness of the returns sent in by the companies. The commissioner 8 114 therefore recommended that the companies be required to send in monthly statements of their gross earnings, and that the commissioner should at least once a year make a personal investigation to ascertain the correctness of their returns.466

466 Ibid., pp. 25–26.

Since the authority of the legislature over special charter railroads had not yet been judicially determined, it was not to be expected that any important railroad legislation would be enacted during the session. Governor Austin had been nominated by acclamation as a candidate to succeed himself, and was re-elected by a large majority in November.467 The Democrats, during the campaign, had denounced the Republican administration for its utter failure to enforce the laws of the state relating to corporations,468 but the voters remained loyal to the party in power. The legislature was strongly Republican and the grangers remained in the ascendancy. Thirteen of the forty-one senators, and fifty-three of the one hundred and six representatives, are listed as farmers in the legislative handbook of 1872.469

467 World Almanac, 1872, p. 69: Austin, 46,415; Young, 31,441.

468 St. Paul Daily Pioneer, Sept. 14, 1871, p. 4, c. 2; Dem. party platform.

469 Legislative Manual of the state of Minn., 1872, pp. 146–153.

Few general railroad laws were enacted during this session. The railroad commissioner was required to examine the books and accounts of the railroad companies at least once a year to ascertain the amount of gross earnings of each road. An act was passed to compel the railroads of the state to build and maintain proper cattle-guards and fences along their line.470 Their failure to do this in the past had been a source of great annoyance and loss to the farmers, and a law to this effect had been strongly urged by the railroad commissioner in his report.471

470 General Laws of Minn., 1872, ch. 26.

471 Railroad Commissioner's Report, 1871, pp. 16–17.

But quite a number of special railroad laws were enacted. Three acts were passed giving companies the privilege of building branch lines, with provision for securing proper connections with intersecting roads and reasonable rates and services without discrimination.472 These provisions were identical with

472 Special Laws of Minn., 1872, chs. 96, 122, and 124.

115 those which we noted as inserted in a number of special acts by the legislature in the winter of 1871.473

473 Ibid., 1871, chs. 63, 64, 66, 67, 70, and 71.

Two other acts confer special legislative benefits on the express condition that the companies shall at all times carry freight and passengers at reasonable rates,474 while a third makes it a condition that the railroad shall be subject to all laws of the state which are general in their nature.475 An Iowa corporation was permitted to extend its line into the state on condition that it paid a three per cent gross income tax to the state and charged such reasonable rates for the transportation of passengers and freight within the state as might be fixed by the company or prescribed by general law.476 The First Division of the St. Paul and Pacific was authorized to build a branch line on condition that it would carry freight and passengers on this branch at such reasonable rates as might from time to time be prescribed by law.477

474 Ibid., 1872, ch. 93, sec. 3; ch. 119, sec. 2.

475 Ibid., ch. 100, sec. 2.

476 Ibid., ch. 95, sec. 2.

477 Ibid., ch. 120, sec. 1.

These enactments show the determination of the legislature to bring the railroads operating with special charters under legislative control by special agreements, since there was some doubt as yet as to their amenability to the general law.

Two acts passed by this legislature very liberally left blank the maximum amount of common and preferred stock which might be issued in connection with branch lines.478 What would seem to be another step backward in railroad legislation was the revival of two territorial charters. The charter of the St. Paul and St. Anthony railroad company479 had been revived and amended for the St. Paul street railway company in 1868. This amended charter was now revived and further amended by the legislature in 1872.480 The Winona and La Crosse railroad charter, granted in 1856,481 was revived and continued for a new set of incorporators.482 The new corporation

478 Ibid., ch. 96, sec. 1; ch. 124, sec. 2.

479 Session Laws of Minn., 1853, ch. 12.

480 Special Laws of Minn., 1872, ch. 112.

481 Session Laws of Minn., 1856, ch. 159.

482 Special Laws of Minn., 1872, ch. 101.

116 was to carry freight and passengers over its road at just and reasonable rates.483

483 Ibid., ch. 101, sec. 9.

At this session an amendment to the constitution was proposed, providing that the legislature should not authorize any municipal corporation to aid a railroad to an amount

exceeding ten per cent of the assessed value of the property within its boundaries.484 This proposed amendment was ratified by popular vote in the November following.485

484 General Laws of Minn., 1872, ch. 13; Const. of Minn., Art. 9, sec. 14.

485 Railroad Commissioner's Report, 1872, p. 39.

During the summer of 1872 the presidential campaign and national issues were of primary interest throughout the state. At this time there was in some states considerable disagreement in the Republican ranks with reference to the tariff, the civil service, and the administration reconstruction policies. In Missouri the dissenting element, or Liberal Republicans, gained control in January, 1872. They called a national convention which met in Cincinnati in May, nominated candidates for president and vice-president, and drew up a platform embodying their main tenets. The Democrats met in national convention in Baltimore, July 9, and adopted the Liberal Republican platform and candidates. By making this coalition they hoped to defeat the administration Republicans in November.

In Minnesota the defection within the Republican party was not particularly strong. The Republican state convention met May 8, and in its platform expressed its confidence in the national administration and heartily endorsed President Grant for a second term.486 The three congressional district conventions followed suit.487 In none of these platforms was any specific mention made of railroads. The St. Paul Dispatch was the only prominent Republican paper in Minnesota to espouse the Liberal Republican cause,488 although their presidential candidate, Horace Greeley, had been quite popular in the state.

486 St. Paul Daily Press, May 9, 1872, p. 4, c. 2–3.

487 Ibid., July 12, 1872, p. 2, c. 3, First dist.; July 17, p. 4, c. 2, Second dist.; July 19, p. 4, c. 1, Third dist.

488 Smalley, The History of the Republican Party, p. 193.

The opposition element in the state united as in the previous 117 campaign489 and presented platforms denouncing the national and state administration and demanding reform. They caused quite a stir in many parts of the state but the administration Republicans came out victorious in the November election. Grant received 55,708 votes; Greeley, 35,211.490 The Liberals were defeated by a large majority in all three congressional districts,491 making a good showing in only a very few counties. In the state legislature the Republicans made gains over the preceding year, having thirty members to the opposition's eleven in the Senate, and seventy-eight to the opposition's twenty-eight in the House.492 In the summer and fall of 1872 the papers had very little to say about railroad abuses. There seems to have been comparatively little agitation, yet we find that about as large a proportion of farmers were elected to the legislature as in 1871.493

489 St. Paul Daily Pioneer, June 16, 1872, p. 4. c. 1; July 11, p. 2, c. 1; July 20, p. 2, c. 1.

490 Smalley, op. cit., p. 194.

491 The Tribune Almanac and Political Register, 1873; First dist., 20,371 to 10,841; Second dist., 15,257 to 10,832; Third dist., 19,182 to 12,609.

492 The World Almanac, 1873, p. 42.

493 Legislative Manual of the State of Minn., 1873, pp. 166–171, 12 farmers in the Senate and 52 farmers in the House; St. Paul Daily Pioneer, Jan. 10, 1873, p. 4, c. 2.

The St. Paul and Pacific, Lake Superior and Mississippi and the Northern Pacific railroad had a Railroad Building at the State Fair in November, 1872, and gave an exhibit of what had been raised on lands lying within the limits of their land grants. A special committee appointed by the state agricultural society gave an eight column report of this exhibit in the Farmers' Union, and commended the railroads very highly on their liberality and enterprise in bringing to public notice the productiveness of their lands. In the opinion of this committee thousands of settlers would be attracted to the state, and hundreds of

thousands of dollars be invested, as a direct result of this exhibition, which it was hoped would become one of the prominent features of future state fairs.494

494 Farmers' Union, Nov. 7, 1872, pp. 2–3.

When the legislature met in January, 1873, there seemed to be no measures of exciting interest demanding action.495

495 St. Paul Daily Pioneer, Jan. 7, 1873, p. 2, c. 1.

118 The railroad cases were still pending, and it was generally understood that appeal would be made to the federal supreme court, if the railroads lost out in the state courts. Under the circumstances the prospects for immediate railroad reform were not promising.

The governor in his message informed the legislature that all the companies, local and non-resident, operating within the state, continued to disregard the maximum rate law.496 As an intelligent basis for judicious legislation, he recommended the appointment of an able committee to make a searching and far reaching investigation.497 He favored making conspiracy against trade, or the entering into a combination to prevent competition, an indictable offense punishable by fine and imprisonment; and in case directors or managing officers were convicted, such conviction should work the forfeiture of the franchises of the corporation.498 In addition to necessary state legislation, he recommended that Congress be memorialized to exercise its constitutional prerogative to regulate commerce among the several states, and by an act embracing the entire system of the Union to accomplish what the several states by their discordant legislation, their deficient legislation, and their non-legislation, could never accomplish.499 The governor recommended that Congress be further memorialized to aid in the construction of canals to give continuous water communication from the Mississippi river and its tributaries to the seaboard. He believed that this was fully as important to the people of the West as the correction of railroad abuses.500 He urged the farmers especially to profit by the experience of the trades

unions and the protective and co-operative societies of other trades and calling, and to organize for securing economic independence.501

496 St. Paul Daily Pioneer, Jan. 10, 1873, p. 2, c. 2; Minn. Exec. Docs., 1872, vol. 1, Governor's Message, p. 5.

497 Ibid., p. 8.

498 Ibid., p. 8.

499 Ibid., p. 8.

500 Ibid., p. 8.

501 Ibid., p. 10.

The railroad commissioner in his report to the legislature gave a short summary of the origin and progress of each road 119 already constructed or in the process of construction.502 He again called attention to the fact that much railroad land was escaping just taxation, and urged the legislature to take appropriate action.

502 Railroad Commissioner's Report, 1872, pp. 5–22.

As a remedy for discrimination against places he recommended the enactment of a pro rata law similar to that proposed by the Massachusetts Commissioners in their report for 1870.503 The commissioner was convinced that discriminations, both against persons and localities, were opposed to the well-defined principles of common law, and claimed for the state an inalienable police power to prevent and restrain such infringement on the rights of the public.504

503 Ibid., p. 45. See Railroad Commissioners' Report (Mass.), 1870, p. cx. The Mass. Commissioners in turn copied the Mich. law of 1869, No. 109, sec. 17, cl. 9.

504 Railroad Commissioner's Report, 1872, p. 46.

The commissioner reported in the main favorably on the physical condition of the roads, and was enthusiastic over their rapid extension throughout the state. He commended the practice of building railroads in advance of actual business needs, asserting that Minnesota was twenty-five years in advance of what she would have been if the “timidly conservative ideas of the past” had prevailed.505

505 Ibid., p. 50.

If the legislature had carried out the recommendations of the governor and railroad commissioner, much of its time would have been occupied with important remedial railroad legislation. As it turned out, comparatively little was done.

An act was passed making the state treasurer collector of railroad taxes and providing more adequate means for their collection.506 This act did not go as far as desired by the railroad commissioner. Any railroad company organized under the laws of Iowa was authorized to extend its lines into Minnesota, and, as to these extensions, was to possess all the powers, franchises, and privileges, and be subject to the same liabilities, as railroad companies organized under the general laws of the state.

506 General Laws of Minn., 1873, ch. 114.

During this session a large number of counties, towns, cities and villages were authorized by special law to issue bonds to 120 aid in railroad construction.507 An act was passed which on the face of it would seem to amount to partial repudiation. The city of Hastings was authorized to adjust and compromise its outstanding bonded railway indebtedness at a rate not to exceed fifty cents on the dollar, new bonds to replace the old.508

507 Special Laws of Minn., 1873, chs. 152, 153, and 156–166.

508 Ibid., ch. 151.

As in 1872, attempts were made to bargain with railroad companies as to rates through special legislation. The Milwaukee and St. Paul railroad company was authorized to build a bridge across the Mississippi river from La Crosse on condition that it would carry freight and passengers on equal and reasonable terms;509 and on this same condition the legislature extended the time for the completion of certain branch lines of the St. Paul and Pacific railroad company.510 Many grangers throughout the state must have thought this provision rather superfluous.

509 Ibid., ch. 106.

510 Ibid., ch. 107.

CHAPTER XII. THE GRANGER MOVEMENT IN 1873.

In the winter of 1873 the agitation against railroad abuses was resumed, and before long it surpassed in intensity the railroad war of 1870. In this renewed contest the grangers of the Order of Patrons of Husbandry figured prominently. The farmers had learned to recognize the need of efficient organization, and as the purposes of the grange were frequently interpreted to meet the particular needs of different localities and the grange everywhere was proclaimed the farmer's best means of self-protection against all oppression, granges began to spring up on all sides. Soon many unauthorized organizers were in the field, making the best of the movement for their personal interests, political or financial, and the Worthy Master of the National Grange found it necessary to give notice to the effect that no dispensations would be issued in Minnesota on the application of any person except deputies appointed by the Master of the State Grange.511

511 Farmers' Union, March 29, 1873, p. 102, c. 3; notice dated Washington, D. C., March 18, 1873.

The constitution of the Order forbade the discussion of political questions in the meetings of its granges. But how could a constitutional provision prevent the discussion of railroads, monopolies, middlemen, and the tariff, when the members of the grange had in many cases united for the express purpose of discussing these questions and planning concerted action? And even if such discussion had no recognized place in the grange meeting proper, there was nothing to prevent an informal discussion before or after the regular program. At this time these questions were uppermost in the minds of the people everywhere.

The Minnesota State Grange held a large and enthusiastic meeting at Lake City in February.512 In his address to the State Grange the Lecturer, Mr. D. C. Cummins, proclaimed as the highest ambition of the Order the elevation of the “family of husbandmen form their present ignoble position to that exalted station in society and government which the contemplation and imitation of nature's works, associated with intelligence, is calculated to do.”513 It is difficult to see how the Order could accomplish such purposes without taking part in the political activities of the day.

512 Farmers' Union, March 1, 1873, p. 67, c. 4.

513 Ibid., May 3, 1873, p. 140, c. 4.

There seems to have been no ban placed on the discussion of the railroad problem at this meeting. The Grange even went so far as to pass the following resolution:

Resolved, That the Secretary of the State Grange request our representatives in the legislature of the present session to use their influence to pass a bill in effect to appropriate a sum of money sufficient to employ the necessary legal council to test the validity of the present law on our statutes, defining the charges of railroads for freight and passenger tariffs over their respective roads.514

514 Ibid., March 15, 1873, p. 83, c. 5.

By this resolution the Grange officially showed its interest in existing reform laws. It was not inclined, however, to propose definite plans for further reform.

During the months of March, April, May and June, Ignatius Donnelly made a series of addresses before the granges in Dakota, Rice, Goodhue, Fillmore, Mower, Olmsted, Winona and Washington counties. These addresses were on live questions 122 of the day, such as “The necessity for co-operation among farmers; Patent laws against them; Railroad legislation against them; The robberies of high tariff against them; The evil of paper currency against them; Their remedies: Cheap transportation, ship canals, specie payment, and low tariff.” Extracts from his speeches were published in pamphlet form and widely circulated.515 Mr. Donnelly was very popular as a speaker, and by his brilliant wit and his spontaneous eloquence he could hold the attention and win the applause of an audience on any subject, whether they were convinced by his arguments or not.

515 I. Donnelly, Facts for the Granges (21 pages). The subjects of his speeches cited above are those given on the title page of this pamphlet.

Mr. Donnelly gave the Patrons credit for having revolutionized the interpretation of the laws concerning railroads in bringing them under the control of the state legislature. To him the Order of Patrons of Husbandry meant reform, revolution; it was the fulcrum Archimedes wished, from which to move the world. He believed it to be “the foundation of an universal party, the party of the people—the party of the farmers of the West, the planters of the South, and the poor men of the whole nation * * * * it will name the next President of the United States!”516 It is very probable that Mr. Donnelly was far more interested in the foundation of such a new political party than he was in the Order itself. He was mainly interested in the Order as a means to this end.

516 Ibid., p. 10.

In the “P. of H.” column of the Farmers' Union, May 10, 1873, appeared some fiery “declarations of principles and rights.” A series of resolutions had been adopted at Faribault which were endorsed as the “true ringing declaration of a determined class of men to change the order of railroad government and extortion.” These resolutions demanded immediate legislation, state and national, to protect labor against the encroachment of capital, to prohibit the consolidation of parallel railroad lines, to fix the maximum of railroad charges, and to prevent unjust and oppressive discrimination between local and through freight. They maintained that the inherent power of the people over the railroads had never been forfeited, 123 and protested against the subterfuges of the legislature in avoiding the enactment of necessary laws. The farming community was described as being in an embarrassed and prostrated condition, and a general bankruptcy of the farmers of the state was declared inevitable if the law-making powers did not come to their aid in this great emergency.517

517 Farmers' Union, May 10, 1873, p. 148, c. 1.

A lively discussion arose among the grangers of the state as to what discussions were political and therefore barred from the granges. One Patron in a letter to the Farmers' Union, the official organ of the State Grange, calls the outcry against the grangers' dabbling in politics senseless, and contends that it is the “imperative duty of the friends of morality and good government to combine their influence in the maintenance of pure political action.” He says further: “The Order of P. of H. has undertaken one of the greatest moral reforms that ever blessed an oppressed people, and they are fully competent to complete the task so well begun. Party ties should no longer be heeded, unless parties present men for the suffrage who are known to be paramountly favorable to the agricultural and other industrial interests of the country.”518

518 Ibid., May 3, 1873, p. 140, c. 1; Letter of Wm. Close.

Another Patron says: “Let us throw politics away and elect good, honest, intelligent farmers for every office in the State except our legislature. Some might think we were a little piggish if we wanted that body composed wholly of farmers. * * * Patrons, this is a point worth looking after. Let us think of it at election time.”519 A little later this Patron writes: “Let us inform our next legislators that they shall have our votes with the understanding that they will work for the interests of the farmer and pass a law fixing reasonable rates of transportation and compelling railroad companies to carry our produce to market in reasonable time and be responsible for the safe delivery at any desired market; and they should be informed that if they break the contract and vote in favor of the railroad monoplies, they should be subject to the decision of Judge Lynch and close confinement

519 Ibid., March 22, 1873, p. 93, c. 4; Letter of Geo. E. Hopkins.

124 under a white oak limb for a term of not less than five minutes nor more than fifteen.”520

520 Ibid., May 10, 1873, p. 148, c. 2.

“Bro.” J. S. Denman wrote: “And now, brothers, as election draws near and our town caucuses and county conventions are at hand, we must be up and doing. * * * If we are going to bring about a reform in politics, every man in every town wants to attend the caucus and see that the right kind of men go to the county convention.”521

521 Ibid., July 5, 1873, p. 211, c. 2.

The question occupying the minds of a great number of grangers was what action they should take in the coming campaign. They had common interests, and it seemed absurd for one to go to the polls and vote one ticket while his neighbor voted another.522 The local grangers were hampered in giving formal expression to their political views by the constitutional provision already referred to. But in many counties there was a County

Council composed of representatives from the different subordinate granges in the county. These Councils were extraneous to the constitutional plan of the Order, and were therefore not considered bound by the constitution as were the national, state, and subordinate granges. Mr. Donnelly and others for this reason urged the formation of County Councils in all counties and encouraged political discussion and political action by them.523

522 Ibid., June 21, 1873; Letter of Wm. N. Plymat, p. 197, c. 3.

523 Donnelly, Facts for the Granges, p. 19.

The Steele County Council of Patrons of Husbandry met at Owatonna in the first part of June, 1873, and after some discussion drew up a very vigorous set of resolutions. They agreed that the railroad companies must be radically reformed and controlled by the strong hand of law. The aid of every Patron and of every fair-minded man was invoked to secure legislation fixing maximum charges, preventing watered stock, and prohibiting the consolidation of competing lines. Railroads were to be compelled to assume all the duties of common carriers, and particularly to receive and transmit freight without discrimination or favoritism. They resolved finally, “That we recognize the fact that to secure and enforce these enactments 125 our votes must enforce our wishes and our action must be strongly political, though not partisan in its bearings.”524

524 Farmers' Union, Jan. 28, 1873. p. 205, c. 2.

Other County Councils met and adopted similar resolutions.525

525 For instance, Le Sueur County Council, Oct. 7, Farmers' Union, Oct. 18, 1873, p. 333, c. 1; Olmsted County Council, Oct. 17, The Minn. Record (Rochester), Oct. 25, 1873.

Another plan frequently adopted by the Grangers to secure concerted political action was to call meetings of the members of the different subordinate granges in a county, who

were to act “not as grangers but as citizens.”526 Such a meeting was held in Brownsdale, Mower county, July 26, 1873. The grangers here issued a call for a county convention to organize a new political party and to issue a call for a state convention.527 Mr. J. J. Hunt, Master of the Brownsdale Grange, presided, and Mr. Donnelly delivered the principal address.528 The convention drew up a series of resolutions. They expressed a lack of confidence in both existing political parties, and condemned the present management of railroads whereby monopolies and rings secured special advantages. They considered it the duty of the attorney general to enforce the law of 1871, and demanded an amendment of this law so as to make its provisions more fair and equitable to the people. They called for a county convention of farmers and laborers to meet at Brownsdale, September 25, to nominate candidates for county offices. Finally an invitation was extended to all who agreed with them in these declarations of principles to meet in mass convention at Owatonna, September 2.529

526 Donnelly, Facts for the Granges. p. 19.

527 Ibid., p. 19; St. Paul Daily Pioneer, July 27, 1873, p. 1, c. 2.

528 Farmers' Union, Aug. 9, 1873, p. 252, c. 1–4. The address is given in Donnelly, Facts for the Granges.

529 Ibid., Aug. 9, 1873, p. 252, c. 4.

The people throughout the state were thoroughly aroused, and many were beginning to believe with Mr. Donnelly that the time had come for the organization of a new political party to carry out the proposed reform. As in 1870, the Republican party aligned itself against “railroads and monopolies,” and appealed for the support of all who favored reform.530 In its state convention held in St. Paul, July 16, they adopted in their

530 See Duluth Minnesotian, Nov. 1, 1873.

126 platform resolutions to the effect that no rights should be vested in railroad corporations beyond the control of future legislation, and that the legislature should attach such conditions to all new grants, and to amendments and extensions of old charters, as would place the rights of legislative control over such corporations beyond question. They pledged themselves in favor of the enactment of such laws as would limit to just and reasonable rates all tolls, tariffs, and charges of railroad and transportation companies.531

531 St. Paul Daily Press, July 17, 1873, p. 4, c. 2; Federal Union, July 25, 1873, p. 2, c. 4.

There was a hard fight in the convention between the old “Ramsey dynasty” and the “young Republicans” over the candidate for governor. Mr. Washburn, the Ramsey aspirant, had a strong political backing and was considered by many a worthy favorite; but, after a series of ballots, the choice fell on C. K. Davis, a St. Paul attorney, whose lecture on “Modern Feudalism” had made him popular with those who favored a more stringent corporation control. Mr. Davis was nominated on a very narrow margin, and was not very enthusiastically supported during the following campaign by some of the old party leaders; but as he had been a pioneer in the anti-monopoly movement, his nomination was quite generally looked upon by the people as an overthrow of the “politicians.”532

532 St. Paul Daily Dispatch, Oct. 11, 1873, p. 2, c. 1; St. Paul Daily Press, July 17, 1873, p. 1, c. 1; July 20, 1873, p. 2, c. 6, quotes nine papers endorsing Mr. Davis.

It is not to be understood, however, that Mr. Washburn was opposed to reform. He had been actively interested in the enactment of the law of 1871, and in the campaign of 1873 he spoke strongly in favor of railroad regulation, state and national.533 Throughout the state most of the Republican candidates pledged themselves to support the farmers' movement.

533 Farmers' Union, Nov. 1, 1873, p. 349; speech before Dodge County Agricultural Society, Sept. 26, 1873.

The Democrats co-operated with the new Anti-monopoly party during this campaign. They postponed holding their state convention till after the Owatonna Anti-monopoly convention, having made up their minds to support its candidates, provided they and the platform adopted were acceptable. They contended that the new movement was fully in accord 127 with Democratic principles and deserved Democratic support.534

534 St. Paul Daily Pioneer, Sept. 2, 1873, p. 2, c. 1; St. Paul Daily Press, Aug. 19, 1873, p. 1, c. 1.

Some subordinate granges had met and appointed delegates to the convention to be held in Owatonna, September 2, and other granges were considering what action to take, when State Master Geo. I. Parsons issued a notice giving it as his opinion that not only was such action unwise but also in direct violation of the fundamental law of the Order, and that it subjected the granges so doing to the danger of a revocation of their charters. He expressed profound regret and mortification at having witnessed a departure from the cherished principles of the Order.535

535 Farmers' Union, Aug. 16, 1873, p. 261, c. 2.

This move on the part of the State Master was perfectly consistent with the original aims of the Order and was heartily endorsed by many of the Patrons, 536 but it proved an effective check on organized political action by the granges, much to the chagrin of the Anti-monopolists. It was frequently interpreted as being in itself partisan, because it influenced so many to act through the regular Republican party organization who otherwise would have joined the new movement. Mr. Donnelly was unsparing in his criticism of State Master Parsons, who, he said, would vote for the devil himself if he were regularly nominated by the Republican party.537

536 For example, North Star Grange (St. Paul) by unanimous resolution; Farmers' Union, Aug. 23, 1873, p. 269, c. 1.

537 See Anti-Monopolist, July 16, 1874.

But the anti-railroad agitation was by no means checked. It continued as lively as before among the grangers, and grangers had by this time come to mean all those who sympathized with the farmers' movement, whether they belonged to the Order of Patrons of Husbandry or not. As a matter of fact, in many localities most of the farmers did belong to granges. The regular agricultural societies of the time took no part in the movement. The hitherto numerous farmers' clubs and societies, other than granges, had nearly all suspended operation, or had been transformed bodily into granges. The grange was practically the only vital farmers' organization during this 128 period. Though the granges could take no active part in politics officially, yet they continued as before to afford a common meeting place where farmers could discuss more or less formally the questions in which they were so vitally interested and come to an informal understanding on issues and candidates.

The Owatonna convention was not so well attended as many had hoped for, although twenty-three counties were represented.538 A long series of resolutions was drawn up and adopted, which was to serve as the platform of the new Antimonopoly party. They pledged themselves to recognize no political party or candidate as worthy of support which did not declare that the government cannot alienate its sovereignty, either in whole or in part, to any person, association, or corporation, for any purpose whatever. They would support no candidate who objected to the exercise by the legislature of its power to reverse or annul at any time the chartered privilege, or “so-called vested right,” when exercised by the corporation to the detriment of public welfare. They also condemned protective tariff, high official and congressional salaries, and “back pay.” They condemned the wood and coal rings which monopolized the fuel supply in the cities. They favored free water communication with the ocean. They held that the state ought to bear the cost of suits against railroad companies, and commended the state supreme court on its decision in the case of Blake vs. The Winona and St. Peter railroad company. Farmers and

laborers were advised to choose and elect their own candidates in the coming elections, independent of the action of all other political organizations.539

538 St. Paul Daily Pioneer, Sept. 3, 1873, p. 1, c. 1.

539 Ibid., Sept. 3, 1873, p. 1, c. 2; Farmers' Union, Sept. 6, 1873, p. 285, c. 1–3. The resolutions are also given in full in Martin, History of the Grange Movement, p. 510.

The convention nominated candidates for all state offices, and urged the minor political subdivisions of the state likewise to present complete tickets at the coming election.

During the campaign on the stump and through the press, the Republicans showed that the law of 1871 had been enacted by a Republican legislature and had been upheld by Republican judges. They claimed that they continued to support 129 the reform movement, and that they were pledged to further reform legislation. On the other hand, the Anti-monopolists insisted that the law of 1871 had never been enforced by the Republican officials, the railroads having disregarded it from the start. They contended that the pledges of the Republican platform referred only to future roads and further grants to existing roads, and that they seemed to imply an acknowledgment of vested rights in former grants.540

540 Federal Union, July 25, 1873, p. 2, c. 4.

The railroads were by no means disinterested observers during this campaign. They realized that much was at stake and made free use of passes and other valuable considerations which they were in a position to offer.541

541 Stickney, The Railway Problem, p. 100.

During the years 1872 and 1873 a fierce railroad war was waged, in which Minnesota was vitally interested. The people of the state had long been looking for the completion of a railroad connecting Minneapolis and St. Paul with Duluth, to bring into competition with

the all-railroad route to Chicago a cheaper route eastward via the great lakes, and thus to reduce rates on products sold and on goods shipped in. And low rates came almost immediately on the opening of the new road. The distance from the Twin Cities to Duluth is one hundred and fifty-six miles, while the distance to Chicago is four hundred miles. The promoters of the Lake Superior and Mississippi railroad company figured on doing most of the carrying trade, during the season of lake navigation, for the entire section of the country comprising all of Minnesota and the Dakotas and the parts of Wisconsin and Iowa nearer Duluth than Chicago. But President Mitchell of the Milwaukee and St. Paul railroad issued a decree “making every station on its road as near Chicago on Lake Michigan as Duluth on Lake Superior,” and though the actual difference in distance in many cases was fully two hundred and fifty miles this difference was to be ignored in fixing freight charges.542

542 Ibid., p. 98.

Rates were fixed in such a way that cities and towns within fifty miles of Minneapolis and St. Paul were practically compelled to sell their produce and buy their goods in Chicago. 9 130 While this rate war was on, the farmers in many districts enjoyed extremely low transportation rates, but the railroads had to recoup themselves the best they could during seasons of closed navigation and in districts where competition was not strong. It was claimed that districts in Wisconsin had to pay a considerable part of the expense of the transportation of favored sections in Minnesota during this rate war,543 and this may account to some extent for the strength of the granger movement in Wisconsin at this time.

543 Ibid., p. 112.

There was little or no anti-railroad agitation in Minnesota in 1872. It may be that the people were waiting to see what the results of the legislation enacted in 1871 would be, and of the contest between the railroads. But in 1873, as we have seen, the anti-railroad sentiment in this state was not to be ignored—a sentiment shared, however, by many other states.544

544 Railway Gazette, Dec. 27, 1873, “The Railroad Year.” Under this caption the paper says the year has been distinguished by the growth of distrust and jealousy of railroads, and gives instances from a number of states not usually classed as granger states, namely, Wisconsin, Illinois, Iowa, and Minnesota.

In September, 1873, the Milwaukee and St. Paul railroad joined with the West Wisconsin and the Winona and St. Peter railroads in raising the rate on wheat to Chicago three cents a bushel.545 The Northern Pacific, which had control of the Lake Superior and Mississippi railroad and connections,546 did not make any advance in rates and was highly commended by many for its action.,547 The concerted increase of railroad rates called forth a storm of indignation and gave new impetus to the granger movement.548

545 Duluth Weekly Tribune, Sept. 18, 1873.

546 To make connections with the Twin Cities from Duluth, the Northern Pacific leased three connecting lines: the Lake Superior and Mississippi, May 1, 1872; the Minneapolis and Duluth, Sept. 1, 1871; and the Stillwater and St. Paul, Nov. 1, 1870. See Railroad Commissioner's Reports for 1871, p. 40, app., and 1873, p. 163 app.

547 Duluth Minnesotian, Sept. 20, 1873; Nov. 1, 1873, from the St. Paul Press, Oct. 29.

548 Duluth Weekly Tribune, Sept. 18, 1873, “The Three Cent Extortion” (from St. Paul Press); Duluth Minnesotian, Sept. 20, 1873, “Increase of Railroad Charges;” Farmers' Union, Sept, 27, 1873, p. 308, c. 2, “A Protest.”

In the midst of this intense agitation came the panic of 1873. This financial crisis was the inevitable conclusion of 131 an era of over-speculation and misdirected production, and it was national and international in its scope. In this country money had been scarce and the rate of interest high at different times during the two preceding years. The crisis was precipitated September 18, by the failure of Jay Cooke, who had been unable to float a

large issue of Northern Pacific bonds. The news of this failure shattered all confidence, and a general panic ensued on Wall street, thence spreading over the whole country.

Minnesota had also had her share of speculation. Railroads had been pushed as never before, and almost altogether on borrowed capital, in spite of the fact that different railroad companies had been showing deficits at the end of each year.549 As in the other Granger states, railroads were built far beyond present business demands. Enormous sums of capital were tied up for the time unproductively, and in such amounts per railroad mile as to offer little hope for remunerative returns for some time to come. Business enterprises of all kinds were undertaken with frontier optimism, and to a considerable extent on borrowed capital, for money at the time was plentiful.

549 Railroad Commissioner's Report, 1871, appendix; 1872, app., p. 207; 1873, app., p. 231; Railroad Gazette, Oct. 11, 1873, p. 414; Poor's Manual of the Railroads of the United States, for 1872–3, pp. xlii and xliii; for 1873–4, pp. xl and xli.

But when the crash came ready cash disappeared and business operations were suspended. Even the farmer found it nearly impossible to dispose of his products.550 Fortunately Minnesota had comparatively few business failures, 551 and, as the crops that summer had been reasonably good in spite of local devastation by the grasshoppers,552 the people of the state looked upon the depression as merely temporary.

550 St. Paul Daily Dispatch, Sept. 19, 1873, p. 4, c. 2, “The Senseless Panic.”

551 St. Paul Daily Pioneer, Sept. 20, 1873, p. 4, c. 2; St. Paul Daily Dispatch, Sept. 19, 1873, p. 4, c. 2; Oct. 10, 1873, p. 2, c. 1.

552 St. Paul Daily Dispatch, Sept. 20, 1873, p. 2, c. 1.

The railroads suffered severely, it is true, but their “absentee owners,” who were popularly ranked with tyrants and oppressors, did not get much sympathy. The farmers throughout

the middle west had been in arms against “railroads and monopolies” for several years, and now it was freely charged 132 that they had thereby shaken public confidence in railroad investments and brought ruin to the country. The grangers in turn pointed to the recent disclosures of immense frauds in connection with several of the larger railroads and particularly to the Credit Mobilier,553 and saw in this a sufficient reason for a shaken faith in railroads as operated at the time. Some might admit that their warfare had precipitated an unavoidable catastrophe, but they denied being in any way its cause. They believed for a while that after all the panic was only a flurry in the fictitious values in which the speculators had been interested, and that good honest industry, the economic “bone and sinew” of the country, would not be materially affected.554

553 See House of Representatives, 42d Congress, 3d session, Report No. 77, Credit Mobilier Investigation, Feb. 18, 1873 (pp. xix, 523); Report No. 78, Affairs of the Union Pacific Railroad Company, Feb. 20, 1873 (pp. xxvi, 770); Report No. 78, part 2; Reports No. 81, 82, and 95; Senate Report No. 519, 42d Congress, 3d session, Feb. 27, 1873 (pp. xxxvi, 162); J. E. Stevenson, Speeches in the House of Representatives, Feb. 26 and March 1, 1873, and Exhibit of Credit Mobilier Legislation and Operations (Wash., 1873); J. B. Crawford, The Credit Mobilier of America, its Origin and History; St. Paul Daily Dispatch, Oct. 3, 1873, p. 2, c. 1; Farmers' Union, Oct. 4, 1873, p. 308, c. 3; The Duluth Minnesotian, Sept. 27, 1873; Cultivator and Country Gentleman, Oct. 23, 1873, XXXVIII, 683, “Cause of the Panic.”

554 St. Paul Daily Pioneer, Oct. 23, 1873, p. 2, c. 1; Nov. 1, 1873, p. 2, c. 2; Nov. 9, 1873.

The grangers remained firm in their conviction that their cause was just and continued their fight for railroad regulation. The campaign seemed in the main unaffected by the panic.

The Olmsted County Council of Patrons of Husbandry met October 17. They passed a resolution declaring that it was the duty of the state and general government to establish reasonable maximum rates of freight upon railroads. The Council submitted twenty-

five questions to the subordinate granges of the county for discussion. None of these referred to the railroad or monopoly problems of the time. This seems to indicate that they intended to live up to the letter of the law and not formally discuss political questions in the granges.555

555 The Minnesota Record (Rochester), Oct. 25, 1873.

The Democrats and Liberal Republicans met in state convention at St. Paul on September 24 and formally endorsed the 133 platform and candidates presented by the Anti-Monopolists at Owatonna.556 It was believed that concerted action on the part of all the opposition forces would inevitably lead to a Republican defeat at the polls in November.

556 St. Paul Daily Pioneer, Sept. 25, p. 2, c. 1; Duluth Minnesotian, Sept. 27, 1873, “The Demo-Liberal Convention.”

The unusual interest taken in this off-year election is shown by the comparatively heavy vote cast throughout the state on election day. The voting was frequently for men rather than parties. The number of votes received by different men on the same ticket varied considerably. Of the state offices, the most lively contest was for the office of state treasurer. During the legislative session of the previous winter the treasurer had been accused of placing state money at the disposal of a “gang of St. Paul politicians” without securing to the state any compensation for its use.557 An investigation followed which disclosed a number of irregularities. The state treasurer was receiving a comparatively small salary, but through a secret, well-established practice of depositing the state money judiciously the party in power was enabled to strengthen its organization and the treasurer could add materially to his rather meager income. When these facts became known a general hue and cry for reform was raised, and during the campaign of 1873 great political capital was made of this example of “Republican corruption and mismanagement.”

557 St. Paul Daily Dispatch, Oct. 20, 1873, p. 2, c. 1; Oct. 27, p. 2, c. 1; Nov. 1, p. 2, c. 1.

The Republican convention had made a tactical mistake in not nominating for state treasurer Mr. E. W. Dyke, whom Governor Austin had appointed to fill the resigned treasurer's place, and who had filled this position creditably. The opposition element saw in this another flagrant example of “ring” rule within the Republican ranks, and the Anti-monopolists, seizing their opportunity, nominated Mr. Dyke as their candidate for this office.

In the November election the Republicans were victorious. They elected the entire state ticket, with the exception of treasurer. To this position Mr. Dyke was elected by a good majority.

Of the one hundred and six representatives, the Republicans 134 elected seventy-eight. Of twenty senators to be chosen at this election, the Republicans elected a sufficient number to give them thirty out of a total of forty-one members of the Senate.558 This was an increase in the Republican membership in both the House and Senate over the preceding year.559 The defeat of the opposition was variously explained. The St. Paul Pioneer claimed that it was due to lack of efficient campaign organization, asserting that the Democratic state central committee had never met, and that the Anti-monopoly committee had likewise done absolutely nothing to keep able men in the field.560

558 World Almanac, 1873, p. 42.

559 Cf. World Almanac, 1872, p. 69.

560 St. Paul Daily Pioneer, Nov. 12, 1873, p. 2, c. 1.

It is to be noted, however, that the defeat of the Anti-monopoly party and its allies did not mean the overthrow of the farmers' movement. By nominating C. K. Davis, a known sympathizer with the grangers, for governor, the Republican party practically adopted this movement as its own, and seriously interfered with the plans of Mr. Donnelly and others to identify the anti-monopoly movement with a new political party.561 A letter which Mr.

Davis published shortly after his nomination was instrumental in reassuring many whose faith in the party was wavering.562 Had Mr. Dyke been nominated state treasurer by the Republicans, the opposition party would have made a sorry showing. All Republicans were by no means in accord with the granger ideas of their gubernatorial candidate. This was evident at the state convention, and later throughout the campaign. But under his leadership the granger element remained in the ascendency and the party gained a decisive victory at the polls.

561 St. Paul Daily Press, July 17, 1873, p. 1, c. 1; Aug. 19, 1873, p. 1, c. 1.

562 Smalley, The History of the Republican Party, p. 196.

The interest in the railroad question did not subside after election. Although the railroads were about to go into the hands of receivers, the people remained determined that they should be compelled to submit to law.

During the annual meeting of the State Grange held in Faribault in December, the State Master delivered an address 135 on transportation. Although he had opposed political action on the part of subordinate granges, his speech was thoroughly in sympathy with the farmers in their complaints of exorbitant and unjust tariffs and in their demands for reduced rates. He held that since the railroads of the state had been largely built by the people through land grants and bonuses, it was unjust for them to earn dividends on other than their actual investments and thus make the people pay dividends on their own donations. He therefore recommended that the State Grange send a select committee to the next legislature to assist in the framing of a law looking to the correction of the evils of the existing system of transportation. He also recommended that assessments be levied on the granges for carrying on any suit in which the validity of such a law might be contested.563

563 Farmers' Union, Dec. 27, 1873, p. 412, c. 4–7.

It is difficult to understand how Mr. Parsons could construe such action on the part of the State Grange to be anything but political in its nature. Later in the session a motion to provide for such a “lobbying” committee as recommended by the State Master was voted down because of the expense involved, and especially because many deemed the plan discreditable to the Order.564

564 Ibid., March 7, 1894, p. 68, c. 1.

CHAPTER XIII. THE GRANGER LEGISLATION OF 1874.

During the campaign of 1873, as we have seen, the railroad question was the most vital issue in most parts of the state. The widespread dissatisfaction with the railroad management of the time found expression through caucuses and conventions, in party platforms, and in campaign speeches, and was voiced in no uncertain tone on election day. In the legislature which met in January, 1874, a large majority, regardless of party affiliations, had been pledged to railroad regulation. Of the one hundred and six members of the House sixty-four were farmers, and there was also a good sprinkling of farmers in the Senate.565 Most of these were Patrons and came as “express

565 Minn. Legislative Manual, 1874, pp. 148–153; Farmers' Union, July 18, 1874, p. 220, c. 1.

136 representatives of the Grange movement.”566 There seems to have been a general feeling of confidence in these legislators. Most of them were believed to be men who had the “moral courage to attack iniquity in its very citadel.”567

566 Farmers' Union, July 18, 1874, p. 220, c. 1; “Mr. Donnelly once more.”

567 St. Paul Weekly Pioneer, Feb. 20, 1874.

At the opening of the session the more radical element tried to unite all those who were pledged to reform and thus capture the organization of the House. All “anti-monopolists,”

without regard to former party ties, were invited to meet in a caucus to nominate candidates for the elective House offices.568 Their candidate for speaker, a member of the grange, lost out by only three votes. Many felt this defeat keenly and took it as an indication that the cause was lost for the time being.569 The Pioneer, in commenting on the organization of the House, expressed itself as follows:570 “It was to their credit that a few members of the House elected on the Republican ticket came here with an honest purpose to aid reform. It was to their discredit that the ring-master, with whip and club, drove them into the monopoly trap, by which the organization of the legislature will be handed over in all its parts to those corrupt and venal few who have so long preyed on the vitals of the state. * * * The party of monopoly and corruption is still in the ascendant in Minnesota.”

568 St. Paul Daily Dispatch, Jan. 5, 1874.

569 Ibid., Jan. 7, 1874; “Defeated by Treachery.”

570 St. Paul Daily Pioneer, Jan. 4, 1874.

Mr. Donnelly, who had been elected senator, immediately expressed lack of faith in the legislature and began preparations for a new campaign. He was appointed to serve on the Senate railroad committee, but refused to meet with the other members because he did not believe they were in sympathy with the people.571

571 Farmers' Union, Feb. 21, 1874, p. 52, c. 2.

Governor Austin, in his final message to the legislature, reviewed the railroad situation at length. It is evident, from his recommendations and remarks, that his position in regard to railroad regulation remained unchanged. The state supreme court had upheld the constitutionality of the law of 1871 in 137 the Blake cases, but the railroad company had appealed to the federal supreme court. The governor deemed it advisable to make it the duty of the attorney general, or of the railroad commissioner, hereafter to prosecute suits

of this nature at the public expense.572 He believed that the law of 1871, if maintained, would be found too arbitratry and inelastic, especially because all railroads could not justly be required to carry freight and passengers at the same rates.573 He recommended that complaints against railroad companies should be heard and determined by a board to consist of the railroad commissioner and a number of efficient men appointed to serve with him.574 He approved of adopting in the main the French plan of strict government inspection and supervision of all roads, the regulation of their charges, and allowing no tariff advances without showing good cause and obtaining leave.575 He believed as before, however, that cheap transportation could only be secured by improving and extending the waterways.

572 Minn. Exec. Docs., 1873, vol. 1, Governor's Message, p. 16.

573 Ibid., p. 18.

574 Ibid., p. 19.

575 Ibid., p. 20.

He urged a considerate attention to the claims of foreign creditors at this time of financial depression. The railroads of the state had been built largely by foreign capital, the St. Paul and Pacific alone having twenty-six million dollars in bonds held in Holland. Though the money had in many cases not been honestly applied, he considered the claims just and worthy of consideration.576

576 Ibid., pp. 11–12.

The Winona and St. Peter railroad company stood in need of legislative confirmation of its claims to certain lands. The governor suggested that in this, as in other cases where remedial legislation was sought, it should be given with such conditions as would expressly secure the company's submission to the general laws and regulations of the

state. As we have seen, the legislature had frequently embodied special provisions as to reasonable rates in such enactments, but these had not gone to the extent of requiring a full surrender of their special privileges. Since all the special charter railroads had not come before the legislature at the same time for relief, it 138 had been repeatedly argued with effect that such a provision in an individual instance would be an “unfriendly and unjust discrimination.”577

577 Ibid., pp. 13–14.

Governor Davis, in his inaugural address, showed himself equally interested in securing reform. He was not certain that the law of 1871 would be binding on other railroad companies, even though it were held applicable to the Winona and St. Peter.578 He considered the claims of the special charter railroads, if upheld, a standing menace to the state. He proposed two remedies. First, the state's right of eminent domain might be applied to the railroads in such a way that the state on payment of just compensation could acquire the right to prescribe rates. The measure of such compensation could not be what abuse and extortion on the part of the companies would yield if permitted to continue forever, but would have a more reasonable standard.579 Second, he recommended a constitutional amendment prescribing that when any statute is enacted in favor of or for the benefit of a company at its instance, the company should by the mere force of the beneficial enactment be subject to such duties and control by the state as the amendment might propose. Since railroad companies were frequently in need of such favorable and enabling legislation, he believed such a policy would soon annihilate the claims of the special charter companies to self-regulation.580 The new constitution of Pennsylvania, adopted in 1873, contained such a provision.581 As we have seen the retiring governor recommended a similar plan, but not so fully developed.

578 Ibid., Inaugural Address, p. 12.

579 Ibid., p. 13.

580 Ibid., pp. 13–14.

581 Const. of Penn. (operative Jan. 1, 1874), Art. 17, sec. 10.

The railroad commissioner, in his annual report, complained that his powers were too limited to remedy the railroad abuses. He called attention to the fact that he could not commence suits against railroad companies and had no power to prevent extortions, his duties being mainly limited by the law to the collection of facts and statistics for the information of the legislature.582 He made no recommendations in this regard, but

582 Railroad Commissioner's Report, 1873, pp. v and vi.

 left it to the legislature to determine whether an extension of powers would be advisable.

The commissioner had continued his investigation of railroad lands which were legally subject to taxation, and reported new cases of evasion.583 Most of the companies paid their gross income tax promptly, but where the companies neglected or refused to make returns of their gross earnings there was no proper method provided by law for its collection. He recommended legislation to remedy this defect.584

583 Ibid., pp. vi-xi.

584 Ibid., p. xiv.

Various remedies against unreasonable rates are discussed. In view of the fact that most of the railroads of the state were bound by their charters to transport freight at reasonable rates, and since proofs as to reasonableness or unreasonableness were mostly in the exclusive possession of the railroad companies, he contended that the burden of proof ought to be shifted from the shipper to the company, and that the legislature should establish certain rates to be prima facie reasonable. The railroads would be permitted to bring forward proofs to rebut this assumption of reasonableness.585

585 Ibid., pp. xlv-xlvi

The railroads continued to insist on their “vested rights” and immunity from the general laws and regulations. Discriminations continued to be the rule, rather than the exception. The commissioner believed that as long as the railroads insisted on these wrongs, so long would the revolt against them assume greater and greater magnitude.586 He again reviewed the federal, state, and municipal aid to the railroads of the state, and contended that the people had not shown themselves unfriendly to the railroads as often charged. They had been liberally dealt with in franchises, land grants, bonuses, and right-of-way donations; and all that the people ask for these prodigal gifts, said he, is security from extortion and freedom from unjust discrimination.587

586 Ibid., p. lxiii.

587 Ibid., p. lxiii.

The great question before the legislature of 1874 was the solution of the perplexing railroad problem. All agreed that something must be done, but there was a great variety of opinions 140 in the legislature and throughout the state, as to what should be done. Many held that nothing short of a constitutional amendment defining clearly the power of the state over railroads would suffice. St. Julien Cox proposed in the Senate to add an article of ten sections to the constitution.588 These sections embodied the main provisions of the recent Illinois and Pennsylvania constitutions relating to railroads.589 This proposed amendment was received with favor by many antimonopolists in both houses, but its consideration was indefinitely postponed by a vote of eighteen to thirteen.590 One provision of this proposed amendment forbidding the consolidation of parallel lines was later in the session enacted as a law.591 It is verbatim from the Pennsylvania constitution, except that it applies to railroads only and not to railroads and canals.592

588 St. Paul Evening Journal, Jan. 9, 1874; An address to the Antimonopoly Party in Minn., 1874, p. 9.

589 Const. of Ills., Art. XI, secs. 9–15; Const. of Penn., Art. XVII, secs. 1–12.

590 An address to the Anti-monopoly Party in Minn., 1874, p. 9.

591 General Laws of Minn., 1874, ch. 29.

592 See Const. of Penn., Art. XVII,sec. 4.

At its annual meeting in December the State Grange had decided against maintaining a “lobbying committee at the capital during the legislative session.593 But when the legislature met the executive committee of the State Grange, at the request of a number of legislators, appointed a committee to confer with them as to what legislation was desired by the Patrons and farmers of the state.594 Its members were given seats in the Senate, with the understanding that they were to look after matters of interest to the farmers.595 In certain quarters much was expected of this committee,596 but little was accomplished beyond stirring up considerable ill-feeling in many of the granges because it had been appointed against the express wishes of the State Grange.597

593 Farmers' Union, Mch. 7, 1874.

594 Ibid., March 28, 1874.

595 Ibid., Feb. 21, 1874, p. 52, c. 2.

596 Ibid., p. 52, c. 2.

597 Ibid., March 7, 1874, p. 68, c. 1; March 21, 1874, p. 84; Apr. 11, 1874, p. 108.

At first the farmer element in the legislature had a feeling of distrust and jealousy toward the other members, which threatened to interfere seriously with the legislative work, but 141 this soon passed away.598 The reformers were divided into two main factions. The more radical wished to follow up the state supreme court decision in the Blake case, and advocated laws fixing the rates of charges arbitrarily on the plan of the law of 1871. Others favored the enactment of a new law framed on the theory that the railroad corporations should each be allowed to charge a reasonable toll, after taking into account the benefits they had received from the people.599

598 Ibid., Feb. 14, 1874, p. 44, c. 2.

599 Owatonna Journal, Apr. 9, 1874; Speech by Hon. Amos Coggswell.

A bill establishing maximum reasonable rates and providing stringent penalties was introduced in the Senate, but met the same fate as the proposed constitutional amendment,—it was indefinitely postponed. All the six who voted against postponement were anti-monopolists. One had been elected as an independent, and five as Republicans; of these five, three were grangers.600

600 An Address to the Anti-Monopoly Party in Minn., 1874, p. 10.

State senator Donnelly introduced a bill based on the law of 1871. Its main feature was a provision that whenever any railroad company refused to obey the law, it should at once be put into the hands of receivers. Railroad companies were in this way to be compelled to obey the law while litigation was going on. They were not to have the privilege of refusing obedience until the law had been sustained in the highest courts.601

601 Ibid., p. 10.

In the House a bill was introduced by Mr. Crandall, and was favorably reported by the committee of the whole. 602 This bill was in the main like the Illinois railroad law, but it

included a maximum rate above which the railroad commissioners were not to go in fixing rates. The railroads were to be divided into classes according to the amount of business done, and rates were to be prescribed for each separately.603 This bill passed the House by a vote of sixty-five to twenty-nine,604 but came only as far as the second reading in the Senate.605

602 House Journal, 1874, p. 185; H. F. No. 36.

603 Farmers' Union, Feb. 14, 1874,p. 44; see also Feb. 21 and 28.

604 House Journal, 1874, p. 217; H. F. No. 36.

605 Senate Journal, 1874; see Index, p. 622, Bills of the House, No. 36.

The House indefinitely postponed a bill to provide for the appointment of a board of railroad commissioners,606 but passed a bill creating the office of assistant railroad commissioner.607

606 House Journal, 1874, p. 185; H. F. No. 4.

607 Ibid., p. 235; H. F. No. 86, here by misprint No. 36.

A number of bills were also under consideration in the Senate, when its Railroad Committee introduced a substitute bill for all pending railroad bills, including those passed by the House.608 This bill passed the Senate,609 but did not prove stringent enough to suit the House. First the committee on railroads, to which it was referred, reported back a substitute,610 but on recommitment they reported it back with amendments and recommended its passage.611 Two successive conference committees were appointed before the bill as amended by the House with some further amendments was acceptable to both houses.612 The House for a long time insisted that a maximum rate should be fixed above which the commissioners were not to be allowed to go, but was at last

forced to yield.613 The bill passed the House by a vote of eighty-three to three.614 In the Senate only two votes were cast against the bill, those of Donnelly and Drake,615 one the leader of the new Antimonopoly party, and the other the president of the Southern Minnesota railroad and Republican leader in the Senate.616 Donnelly objected to the bill because it gave a commission of three appointed by one man, the governor, the power to fix rates without any limits whatever. “The people elected a legislature to regulate railroads,” said he, “and after sixty days session the Republican majority discard all the bills proposed by the Anti-monopolists, and coolly tell the people, ‘You picked the wrong men; we know nothing about railroads, we are too ignorant and incapable to fix a schedule of charges.’”617

608 Senate Journal. 1874. p. 291; S. F. No. 271. See Farmers' Union, Feb. 28, 1874.

609 Ibid., p. 344. The vote stood 29 to 7.

610 House Journal, 1874, p. 424.

611 Ibid., p. 463.

612 Ibid., pp. 498, 550, and 562. See St. Paul Daily Press, March 6, 1874, p. 2, c. 2; St. Paul Daily Dispatch, March 6, 1874, p. 4, c. 2.

613 St. Paul Daily Press, March 6, 1874, p. 2, c. 1.

614 House Journal, 1874, p. 563.

615 Senate Journal, 1874, p. 482.

616 Rochester Post, March 14, 1874.

617 An Address to the Anti-Monopoly Party, 1874, p. 12.

This railroad law of 1874618 created a board of three railroad commissioners to be appointed by the governor, with the consent of the Senate, for a term of two years. No stockholder, trustee, assignee, lessee, agent or employee of any railroad corporation was to be eligible to this office. The commissioners were severally required to give bonds with security in the sum of twenty thousand dollars for the faithful performance of their duties. The governor was given authority to remove any member when convinced that he was guilty of malfeasance or non-feasance of official duties.619 The salary of each was fixed at three thousand dollars per annum and necessary expenses.620

618 General Laws of Minn., 1874, ch. 26.

619 Ibid., sec. 1.

620 Ibid., sec. 2.

They were to be in session at all times for the performance of their duties, and were required to keep a record of all their proceedings and to make an annual report to the governor, containing such information as would disclose the actual workings of the system of railroad transportation in its bearings upon the business of the state and such suggestions as they might deem appropriate. The governor might also direct them to make special investigations and reports.621 They were given plenary powers of investigation, and were authorized to employ experts when they deemed it necessary.622

621 Ibid., sec. 3.

622 Ibid., sec. 4.

The commissioners were directed to make a schedule of maximum legal rates of charges for each of the railroads doing business within the state.623 Special charter railroads were not excepted. The law fixed no maximum rates whatever except for terminal charges.624

623 Ibid., sec. 5.

624 Ibid., sec. 9.

The published schedules were to be deemed prima facie evidence of what were reasonable rates at any given time. The commissioners had authority to revise the schedules as often as circumstances might require, and the changes were binding after publication for three successive weeks in two weekly St. Paul newspapers.625 The act forbade unjust discrimination of

625 Ibid., secs. 6 and 7.

144 all kinds and virtually enforced flat pro rata transportation charges. Different companies might charge different rates, but each company was obliged to charge the same rates at different points for transportation in the same direction on all parts of its main lines, its branches, and on other roads which it used or operated. All variations in charges for services under similar circumstances, directly or by means of rebates or drawbacks, were made prima facie evidence of unjust discrimination, and competition with another railroad at any point could not be proffered as a sufficient excuse or justification. Commutation, excursion, and thousand mile tickets might be issued as before. Otherwise there were only two exceptions to the general rule: Agricultural products might be shipped from outside the state to points within the state at uniform rates, less than the established local rates; and lumber might be transported to points at least twenty-five miles outside the state at special rates.626

626 Ibid., sec. 9.

Railroad companies were required to furnish cars for the transportation of freight when requested to do so, and to receive all freight offered and transport it with reasonable dispatch.627 At all points within the state where two or more railroads intersected, it was

made the duty of the railroads to provide for the convenient transfer of cars and freight from one line to another without unreasonable or unnecessary delay.628

627 Ibid., sec. 10.

628 Ibid., secs. 11 and 12.

All who owned coal, wood, or lumber yards, elevators, warehouses, mills or factories, at or near any railroad, were given right of access to the railroad tracks for necessary connections at a reasonable annual rental, which was to be determined by the railroad commissioners where the parties could not agree.629

629 Ibid., sec. 13.

If any railroad company charged unreasonable rates or unjustly discriminated against any person or corporation, town, village or city, the aggrieved party had a right to recover in a civil action treble damages, together with costs and 145 a reasonable attorney's fee.630 Any company guilty of violating any provision of this act was liable to a fine of one thousand dollars for the first offense, and from two to five thousand dollars for the second and subsequent offenses. In all cases arising under the act, either party had the right to trial by jury.631 Whenever final judgment was rendered against a railroad for the recovery of a penalty prescribed by this act, it became the duty of the railroad commission to institute quo warranto proceedings to procure the vacation of the company's charter and the extinguishment of its franchises; and if the company continued to violate the act while this case was pending, the judge before whom such proceedings were instituted was authorized to appoint receivers for the company.632

630 Ibid., sec. 15.

631 Ibid., sec. 16.

632 Ibid., sec. 17.

Any resident of the state feeling himself aggrieved because of the violation of any provision of this act had the privilege of making a complaint in writing and under oath to the board of railroad commissioners. If the commissioners on inquiry deemed it proper, they could require the attorney general or the proper county attorney to bring suit against the company.633 Employees and agents of railroad companies were made personally liable for willfully aiding in the violation of the law in the same manner as the railroad companies themselves.634

633 Ibid., sec. 19.

634 Ibid., sec. 23.

The act was not to be construed as repealing the common law remedies against railroad abuses, but expressly provided that its remedies were cumulative. Actions brought under its provisions were given precedence over all other business in the courts of the state, excepting criminal business;635 and no such action commenced on behalf of the state might be dismissed unless the reason for dismissal were recorded.636

635 Ibid., sec. 18.

636 Ibid., sec. 22.

The board of railroad commissioners was to possess the powers and perform the duties given the railroad commissioner under the law of 1871, except as changed in this act.637

637 Ibid., sec. 24. 10

The remainder of that law was repealed, as was also the maximum rate law of that year, but the repeal was not to affect suits brought under it.638

638 Ibid., sec. 25.

The provisions of this law were drawn freely from two laws passed by the legislature of Illinois, namely, the act creating a board of railroad and warehouse commissioners, enacted in 1871,639 and an act to prevent extortion and unjust discrimination, enacted in 1873.640

639 Revised Statutes of Illinois. 1874, p. 828.

640 Ibid., p. 816.

While competition alone was no longer relied upon as an efficient safeguard against railroad extortion and abuses, the sentiment remained strong that competition must be maintained as far as possible. The legislature therefore passed an act to prevent the consolidation of the stock, property, or franchises of parallel or competing companies by purchase or lease, nor were their interests to be merged by means of common officers. The question whether railroads were parallel or competing was to be decided by jury as in other civil cases.641

641 General Laws of Minn., 1874, ch. 29.

An act was passed making railroad companies liable for fires along their lines, such fires being made prima facie evidence of carelessness or neglect on the part of the company.642

642 Ibid., ch. 30.

Another act relative to proceedings in expropriation for railroad purposes was made applicable to all railroads whether incorporated under the general law or by special

charter.643 This last feature virtually repealed a great amount of special law, for such provisions were found in all special charters.

643 Ibid., ch. 28.

The senate appointed a committee early in the session to investigate “elevator monopoly” along the lines of the St. Paul and Pacific.644 On February 12 this committee reported that they had conclusively established the fact that a small group of men had enjoyed a complete monopoly of handling, storing, and forwarding grain on the main line of the St. Paul and Pacific railroad ever since it was built. Written contracts had been found which gave them these exclusive privileges. The committee held that a railroad is a common carrier and as such

644 Senate Journal, 1874, p. 86.

147 has no right to establish a monopoly of the storage or commission business, but should be compelled to furnish facilities to all who desired to build warehouses and handle grain. As a remedy for the evils complained of by the farmers along the line, the enactment and rigid enforcement of a suitable warehouse law was recommended. As a further remedy, an action might be brought against the railroad company to vacate its charter for the long continued exercise of ultra vires powers to the detriment of the people.645

645 Ibid., pp. 231–234; Report of the special committee on warehouses and elevators on the St. Paul and Pacific.

The legislature acted upon the recommendations of this special committee.646 A law was enacted declaring all elevators and warehouses situated on any railroad within the state to be personal property and subject to taxation as such.647 By joint resolution the attorney general was instructed to immediately commence judicial proceedings to vacate the charter of the First Division of the St. Paul and Pacific railroad, or to take other action as might be proper to remedy the alleged abuses.648

646 See St. Paul Daily Dispatch, Feb. 14, 1874, p. 2, c. 2, “Elevator Monopoly.”

647 General Laws of Minn., 1874, ch. 32.

648 Ibid., p. 310; Joint Res. No. 30.

Complaints with reference to the handling of grain were not confined to any one railroad. They were quite general. The farmers believed that they were exploited both as to grade and weight. When they shipped their own grain to market the loss of weight en route was frequently such as to discourage similar independent shipments in the future. Various measures were proposed to afford relief. A bill to revive the common law responsibility of common carriers passed the Senate but failed in the House.649 Another bill to remedy the evil of “shortage and stealage” in the transportation of grain by requiring certified weight at the shipping point also failed.650 A bill was passed, however, which fixed the maximum charge of two cents per bushel for receiving, elevating, handling and delivering grain, and provided that the grain inspector must in no way be interested in the purchase and shipping of grain.

649 An Address to the Anti-Monopoly Party, 1874, p. 10.

650 Ibid., p. 10.

148 If a railroad company refused to handle grain at the prescribed rate, any person would, on demand, have the privilege of building and maintaining a warehouse or elevator at the station, without payment of any compensation to the railroad company. Violations of this act involved the penalty of a fine of from one hundred to five hundred dollars.651

651 General Laws of Minn., 1874, ch. 31.

Since the legislature had so strongly asserted its authority over all railroads, one would hardly expect it to make special agreements with railroads for the express surrender of their rate-making power. This course of action had, as we have seen, been recommended

by Governors Austin and Davis and by the railroad commissioner, and it was considered expedient because the federal supreme court might yet decide against the rate-making powers of the legislature in the case of special charter corporations.

The time limit for the completion of branch lines of the Minneapolis and St. Louis railroad company was extended for a period of five years on condition that “passengers and freight shall always be carried on said lines of railroad at such reasonable and equitable rates as may be from time to time fixed by law.”652 This was also one of the conditions upon which time extension was granted to the St. Paul and Pacific railroad company.653

652 Special Laws of Minn., 1874, ch. 103.

653 Ibid., ch. 106, sec. 2.

The Green Bay and Minnesota railroad company, a Wisconsin corporation, was permitted to extend its line into the city of Winona with the privileges and liabilities of railroad companies organized under the general law and subject to the laws regulating the “rate of taxation or rates of freight and passenger traffic” as pertaining to the operation and use of its railroad in Winona.654

654 Ibid., ch. 100.

There were considerable sums due for materials and services in connection with the construction of certain lines of road of the St. Paul and Pacific. The legislature passed a law making the railroad company liable for all these debts and providing that no lands accruing to the company were to be transferred by the state till all debts due to citizens of the state 149 were paid, and if these debts were not paid within six months the governor was authorized and directed to sell public lands held for the company to pay the debts to pay these claimants.655 We have here reflected the very prevalent hostile sentiment toward absentee claimants. The law was later declared unconstitutional.566

655 Ibid., ch. 105.

Owing to the financial stringency following the panic of 1873 the St. Paul and Pacific had been unable to complete two of their lines in the northern and western part of the state within the time specified by the act of Congress granting the company lands. The legislature urgently requested Congress to continue the land grants to the state but directed the Minnesota senators and representatives in Congress not to permit the passage of any act of time extension which did not grant the lands in question directly to the state of Minnesota for her to grant to any company or companies on such conditions as experience had shown necessary for the protection of the people.657

657 General Laws of Minn., 1874, p. 305, Joint Res. No. 24.

The development of water transportation had been a subject of special interest in Minnesota from the earliest territorial days but during the farmers' movement during the early seventies the question was discussed with particular enthusiasm. Some doubted that railroads could ever transport bulky freight, such as grain, great distances at a rate reasonable to the farmers. Many grangers believed that the only way to bring railroads to terms was to bring them into direct competition with water transportation wherever possible. Newspapers published all sorts of projects, as editorials and in their correspondence columns. The legislature of 1874 reflected the public opinion of the time by its unusually large number of memorials to Congress bearing on this subject.

One joint resolution memorialized Congress to cause a survey to be made of the water routes between the navigable waters of the Minnesota river and the Red river of the North to ascertain the feasibility of connecting the two by canal.658

658 Ibid., p. 291, Joint Res. No. 7.

658 Minn. Exec. Does., 1876, vol. 2, p. 621.

150 In another they asked for an appropriation for improving the navigation of the river and lake of St. Croix.659 A third requested Congress to make appropriations for the improvement of the harbor of Duluth to keep it up to the growing necessities of the Northwest.660 In other resolutions they requested their senators and representatives in Congress to use their influence to secure the improvement of navigation on the Mississippi river661 and on the Minnesota river662 and the connection of St. Croix river with Lake Superior by canal, locks and dams.663

659 Ibid., p. 307, No. 26.

660 Ibid., p. 302, No. 19.

661 Ibid., p. 294, No. 12.

662 Ibid., p. 297, No. 15.

663 Ibid., p. 299, No. 17.

It was believed that by connecting the river systems of Minnesota with each other and with Lake Superior nearly all parts of the state would have the benefits of cheap water transportation and of reduced rates on the railroads which were in competition. Navigable rivers and lakes were by act of Congress under the direct control of the federal government and free to all, hence no private individual could monopolize their use. The case of canals was different and in the last mentioned resolution it was stipulated as a condition that the proposed canal and improved water courses should forever remain under control of the United States government.

It is not to be understood that this agitation in favor of water transportation was confined to Minnesota and that it was only of local interest. President Grant in his fourth annual message to Congress, December 2, 1872, called attention to three proposed waterways to connect the West and the South with the Atlantic seaboard and recommended that

a committee or commission be appointed to consider the whole question of cheap transportation.664 The Senate appointed a select committee “to investigate and report upon the subject of transportation between the interior and the seaboard.” This committee spent a good portion of the year 1873 in investigating the subject of transportation and in its report, submitted to the Senate in the spring of 1874 it discusses at length a number

664 Richardson, Messages and Papers of the Presidents, 1789–1897, vol. VII, p. 195.

151 of proposed improved waterways and canals665 and unanimously recommends four water routes as particularly feasible.666 It may be of interest to note that the chairman of this committee was Mr. Windom, senator from Minnesota. He does not seem, however, to have taken any active part in the granger movement in this state.

665 Senate Report 307, Part I, 43d Congress, 1st Session; Report of the Select Committee on Transportation Routes to the Seaboard, pp. 161–240.

666 Ibid., pp. 243–254; see also Senate Misc. Doc. No. 104, 43d Congress, 1st Session; Mr. Windom's Resolution.

A great number of municipal corporations had been authorized to issue bonds in aid of railroad construction by the legislature in 1873. Many more desired the same privilege in 1874. New Ulm had by a four-fifths majority voted to give the Winona and St. Peter a right of way through that city and was authorized to issue bonds for this purpose.667 The city council of Winona had resolved to issue bonds to the amount of fifty thousand dollars in aid of the Green Bay and Minnesota railroad company when authorized by the legislature to do so. The legislature gave the desired consent.668 Other villages, towns and counties were authorized to give aid to railroads669 and from the reports of the railroad commissioner we learn that the aid given was considerable.

667 Special Laws of Minn., 1874, ch. 54.

668 Ibid., ch. 57.

669 Ibid., chs. 59, 61.

War was being waged, not against railroads but against railroad management and railroad claims based on the Dartmouth College decision.670 The farmers were not enemies of the railroads but they were determined to assert the supremacy of the people over everything within the state, including railroads.

670 See Chas. Francis Adams, Jr., Railroads, their Origin and Problems, pp. 126–8; E. W. Martin, History of the Grange Movement, p. 335; The American Law Review, Jan., 1874, “The Dartmouth College Case;” and the following Ch. XVI.

CHAPTER XIV. THE SITUATION IN 1874 AFTER THE ENACTMENT OF THE GRANGER LAWS.

The new railroad law was variously received by the press of the state. The St. Paul Press told of its enactment under 152 the headlines, “The People's Triumph, The New Railroad Law.” It claimed that the representation of the railroads in the legislature had been so small that they had had nothing to say in its enactment.671 The Minneapolis Tribune did not consider the problem solved, but believed the law the best that could have been devised under the circumstances. The legislature had not “killed the iron horse to gratify the insane caprices and spleen of some fanatics and demagogues,” but “had at least put a snaffle on him and a curb bit to hold his rebellious nose in subjection.”672

671 St. Paul Daily Press, March 7, 1874, p. 2, c. 1.

672 Minneapolis Daily Tribune, March 7, 1874, p. 2, c. 1.

The Rochester Post, under the heading, “Donnelly and the Railroad Bill,” would not claim perfection for the bill in all its details, but gave it credit for incorporating the wisest and most judicious thoughts, deductions, and decisions, of the best brains and the clearest heads of that legislature.673

673 Rochester Post, March 14, 1874.

The Record and Union (Rochester) conservatively expressed its belief that while the new bill was an advance on that of 1871, it would not prove “adequate to the consummation desired.”674

674 Record and Union, March 13, 1874.

On the other hand, the St. Paul Dispatch regarded the bill as a triumph of the railroad companies and objected forcibly to the plenary powers, ministerial and judicial, executive and legislative, which had been granted to the commission, and considered its appointment by the governor as a dangerous grant of power to the executive.675

675 St. Paul Daily Dispatch, March 6, 1874, p. 4, c. 2.

Among the people likewise there was a difference of opinion as to the wisdom of the new law. The more radical Antimonoplists attacked it violently. Amos Coggswell, an Anti-monopolist member of the legislature, in a speech before the Turtle Creek grange in Steele county, expressed his conviction that the law would be a complete failure. In the first place it was unconstitutional because it embraced more than one subject in one act, besides not having sections ten to fourteen, referred to in the title. In the second place, it would afford no real remedies. He did not believe the railroads would 153 pay any attention to the commission if it should attempt to reduce rates.676 A more general sentiment in regard to the new law seems to have been that while it would not cure all the evils of which complaint had been made, still it would check the more flagrant wrongs, such as discrimination against persons and places.677

676 Owatonna Journal, Apr. 9, 1874.

677 See Farmers' Union, Apr. 11, 1874, p. 109, c. 3; Resolutions of Dodge County Council.

As members of the new board of railroad commissioners, the governor appointed ex-governor Wm. R. Marshall, John J. Randall, and A. J. Edgerton, who had served as railroad commissioner since 1871. Though some were disappointed to find that the Grange was not represented on the board,678 the appointees seem on the whole to have been quite acceptable to the people.

678 Anti-Monopolist, Dec. 24, 1874; Mr. Parsons' Address.

This commission had been created to bring the railroads into subjection to the law, but the times were particularly unfavorable for carrying out any disciplinary measures. The financial stringency following the panic of 1873 had increased rather than abated. The railroads of the state were on the verge of bankruptcy. Money was very scarce under the most favorable circumstances, and bankrupt railroads under the ban of the law could offer no alluring inducements to men with capital. Naturally enough, men in railroad circles believed that this ban must be removed. A State Senator Drake, president of the St. Paul and Sioux City railroad company, in a letter to J. A. Kiester, said: “It may as well be laid down at once as a maxim, that no money will be furnished by capitalists from abroad or at home, to build roads, until by judicial decisions or otherwise the absolute control of roads when built will belong to those who built them.”679

679 Anti-Monopolist, July 23, 1874; Mr. Drake on Railroads.

The railroads felt themselves aggrieved. There was little or no business, and they were in no mood for reducing rates. In Wisconsin a new railroad law became operative by publication April 28. President Mitchell, of the Chicago, Milwaukee and St. Paul railroad, immediately notified the governor of that state that the board of directors on the advice of able 154 counsel, and after due deliberation, believed it their duty to disregard so much of the law as attempted arbitrarily to fix rates of compensation for freight and passengers.680 When this became known, it was quite generally believed that the railroads in Minnesota

would do likewise, and the people did not like the prospects of lengthy and expensive litigation which eventually might bring no relief.681

680 Wisconsin Railroad Commission Report, 1874, app., pp. 1–4.

681 Minneapolis Daily Tribune, July 16, 1874.

The commissioners published their schedule of maximum legal rates in August. In preparing this schedule they could not be guided by any rule of remunerative interest or dividend on legitimate cost and operating expenses, for, excepting the River Division of the Milwaukee and St. Paul, the railroads were not earning remunerative revenues. Two railroads were in the hands of the receiver, three had defaulted in interest of debts, and others maintained credit by assessment on stockholders.682 But, though operating at a loss, they were guilty of unjust discrimination and of excessive charges at non-competing points. The commissioners tried to interfere as little with the control and regulation of the roads by their owners as was consistent with the prevention and correction of such abuses.

682 Railroad Commissioner's Report, 1874, p. 6.

The schedule published by the railroad commissioners divided freight into four main classes and ten special classes. Articles of freight were arranged alphabetically under each, and following this list of freights came a statement of what each road might charge for each class according to the distance transported. Rates were somewhat different on different roads, but the some rates were applicable on all parts of the same road.683

683 St. Paul Weekly Pioneer Press, Aug. 6, 1874, Supplement, gives official publication of schedules.

The avowed aim of the commissioners was not to reduce rates but to remedy abuses. According to the law of 1874, competition at a certain point did not constitute a valid

excuse for lowering rates to and from that place. If the schedule of the commission had been rigidly enforced, rates would 155 have been raised at the so-called competitive points and lowered at the intervening points.

The competing points were as a rule centers of population and of industry. To a large extent they had been made so through railroad discrimination. Any increase in rates would naturally meet with protest at such places.

The railroad companies in Minnesota, unlike those in Wisconsin, did not openly refuse to comply with the new schedule. As stated in New York Tribune editorials, the railroads rather expressed their intention of trying to accommodate themselves to the new rates.684 When the schedule went into effect legally, the railroad companies actually raised rates at a number of places, and the opponents of the new law attacked it violently. The Anti-Monopolist called it a fizzle and a fraud, and held it to be quite natural that the railroads should accept the schedule of the commission.685 The St. Paul Dispatch said the “Grange ironclad railroad law” worked reform with a vengeance, and went on to show how rates had been raised on the St. Paul and Pacific.686

684 New York Daily Tribune, Aug. 5, 1874, p. 4, c. 4, “The Railway Problem in Minnesota;” Aug. 10, 1874, p. 4, c. 3, “Minding Other People's Business.” See also The Railroad Gazette, Aug. 15, 1874, p. 314; Anti-Monopolist, Aug. 13, 1874.

685 Anti-Monopolist, Aug. 13, 1874.

686 St. Paul Daily Dispatch, Aug. 6, 1874.

The reduction of rates at non-competing points was slight and was no source of great satisfaction to the farmers. Any reduction made at such places was more than counterbalanced in the minds of the people by raised rates at other points. Where the traffic was small and the rates were lowered, the railroad companies gave slower and inferior service, besides withdrawing from service as many trains as they possibly could.

They informed their patrons that they were losing money as it was and consequently had to reduce expenses in all ways possible. The St. Paul and Sioux City threatened to withdraw a passenger train on their line unless they were permitted to charge five cents per passenger mile. The people along the road petitioned the railroad commission to permit this charge, and the commission complied with their request. The Owatonna Journal in commenting on this incident says: 156 “Tally one for the company. What company will next threaten to withdraw a train?”687

687 Owatonna Journal, Dec. 3, 1874.

The railroad commissioners had to deal gently with the bankrupt companies and this attitude was frequently interpreted as an indication that they were in “cahoots with the railroads.” The commission cost the state ten thousand dollars a year. This was a material increase in state expenses, and it was feared that expensive litigation would add to the burden. The grangers did not work in harmony, and this internal discord had a deadening effect.

Besides appointing the so-called lobbying committee, which met with so much disfavor, the State Grange executive committee also appointed a special committee to investigate and report on the Minnesota Farmers' Mutual Fire Insurance Association, popularly called the Farmers' Association.688 This organization had started in 1865 as a farmers' association for mutual aid in case of fire, and was incorporated under the laws of the state in 1867.689 It was extensively advertised in the Farmers' Union, which began publication as a monthly in August, 1867. Mr. W. A. Nimocks, the editor of this Minneapolis farm paper, was secretary of the association. In 1869 its membership numbered over four thousand,690 and it claimed to insure at the rate of seventeen cents per thousand dollars.691 In 1873 the State Grange took preliminary steps towards absorbing the association, and a committee appointed by the State Grange to investigate made a very favorable report to the state convention in December. They reported fifteen thousand

farmers insured, one hundred thousand dollars paid out in losses, and insurance at one-third the usual cost.692

688 Farmers' Union, March 7, 1874.

689 Ibid., Aug., 1867, Vol. 1, No. 1.

690 Ibid., Aug., 1869.

691 Ibid., April, 1869.

692 Ibid., Dec. 27, 1873.

But the committee appointed by the executive committee presented a far different report. The company was declared unsound. They claimed that there was only $50,762.15 on hand to meet the liabilities of 12,752 policies covering $9,622,084, 157 and condemned the business management of the enterprise.693 This adverse report greatly exasperated the grangers. They believed that the chairman of the committee, Mr. Sherwood, had for personal reasons tried to discredit the association.694 Its officers immediately published a lengthy reply to this report and assured the public that the association was sound to the core,695 and it seems that they were given greater credence than Mr. Sherwood's committee.

693 St. Paul Daily Dispatch, Feb. 25, 1874; Farmers' Insurance Company (a four column report).

694 Farmers' Union, March 7, 1874.

695 St. Paul Dispatch, March 3, 1874, “The Other Side.”

The Patrons had from the beginning been interested in co-operation. They had frequently tried to unite and eliminate the “middleman's profit,” and while many of their ventures were

not particularly successful it was generally believed that their activities had forced retailers to reduce their prices materially. In 1873 the executive committee of the State Grange had appointed a state agent to carry out co-operative plans. The agent, Mr. J. S. Denman, on his own responsibility organized a Patrons' Co-operative Society and incorporated it. He made the headquarters of the society at Winona, but planned to establish sub-agencies in the different counties. No distinction was made among those who dealt with the society, a small commission being charged of all whether patrons or not.696

696 Farmers' Union, Nov. 22, 1873, “The ‘fifth wheel’ in the Grange;” Dec. 13, 1873, “What is it?” Dec. 20, 1873.

Mr. Denman's announcement of his plans created a great stir. He was denounced as a middleman because he charged a regular commission. He was accused of having acted without authority in incorporating the state agency. His action was officially investigated and declared illegal. The State Grange, at its meeting in December, 1873, would not recognize him as its agent nor sanction any of his acts.697 Nevertheless the grange proceeded to create the office of state agent, attaching a salary of fifteen hundred dollars, and unanimously elected Mr. Denman to this position.698 But though the leaders tried to smooth over the difficulty, the mistrust and ill feeling

697 Ibid., Dec. 27, 1873; “The Duty of the Patrons.”

698 Ibid.

158 was not altogether swept away. Many who had been attracted to the order because of its co-operative features were disappointed and lost interest in the grange work.

State Master Parsons had in a large measure checked the formal participation of grangers in the campaign of 1873. Mr. Donnelly's plan to create a new granger party had miscarried, but nevertheless the granges had been an important factor at the polls and in the legislature.

In the winter of 1874 Mr. Donnelly resumed his efforts to organize an independent anti-monopoly party. The anti-monopolist members of the legislature met while the legislature still was in session, and a committee of five was appointed to prepare an address to the people of the state.699 The address aimed to show that what good had been accomplished by the legislature was to the credit of the anti-monopolists, and that the best measures and real reform had been blocked by the Republican majority. All friends of reform were invited to meet in every township of the state June 27 to elect delegates to county conventions.700 There were at the time over three hundred active granges in the state. William Paist, secretary of the State Grange, was chairman of the committee which prepared the anti-monopolist address. Nominally through him, the anti-monopolist address and circulars were sent to all the granges of the state to be read at their meetings.701 Later Mr. Donnelly assumed all responsibility.702 This irregular procedure met with the approval of some grangers,703 but on the whole it seems to have been strongly resented. For instance, the Lone Cedar Grange, in a spirited reply to the request to have the anti-monopolist circulars presented to the grange by its officers, treated this request as an insult, because grange officers were under solemn obligation not to use their position to influence any member in matters of politics or religion.704

699 Address of the Anti-Monopolist Party, 1874.

700 Farmers' Union, March 14, 1874. See also Address of the Anti-Monopolist Party, 1874.

701 Farmers' Union, March 21, 1874.

702 Ibid., May 30, 1874.

703 Ibid., March 21, 1874; letter from “A Burns Granger.”

704 Ibid., June 13, 1874.

A prominent Patron of Hennepin county sent in a complaint to Grand Master Adams of the National Grange, and 159 received the following reply: “I have no doubt but the Master of your State Grange will promptly apply the correction to any subordinate grange that will so far forget its constitutional obligations as to take part in partisan politics. I fully agree with you that our Order must not, as such, become a political organization; but I must earnestly hope that our members will be true to their duty as American citizens and take an active and prominent part in moulding the institutions and laws of our country.”705

705 Anti-Monopolist, July 30, 1874.

State Master Parsons then published the following notice, dated July 11, 1874: “Upon any complaint made to me that any Grange in this jurisdiction has violated article XIII of the constitution of the National Grange [prohibiting political activity], I shall not hesitate to suspend that Grange and ask the Worthy Master of the National Grange to revoke its charter upon proof of guilt after hearing.”706

706 Ibid., July 30, 1874.

Mr. Donnelly immediately began an attack on Mr. Parsons for this action, accusing him of having issued the notice for partisan purposes, namely, as in 1873, to save the Republican party from disruption. Again a lively discussion was evoked. Those who had joined the order to secure legislative reform were not content “to amuse themselves with running little parlor machines while others ran the government.”707 The more radical members looked upon Mr. Parsons' action as despotic, and became thoroughly dissatisfied with the order.

707 Ibid., July 16, 1874; letter from Lewis Porter, a Patron, to the Rochester Record and Herald.

Men of all sorts of opinions had joined the grange, and often for widely differing purposes. In the enthusiasm of organization each one confidently looked to the order for the realization of his ideals. The work of organization continued to flourish and the number of

granges was greatly increased,708 but misunderstandings and disputes are fatal in any fraternal order. While the growth of the order was at its height, reports began to spread that it was dying. As early as January,

708 Grange Advance, Dec. 22, 1874, Meeting of Minnesota State Grange. State Master Parsons reported the organization of 142 granges in Minnesota, and 12,000 in the United States and Canada, during the year 1874.

160 1874, while granger legislatures were in session in several states, The Nation had almost prophetically said: “The farmers' movement, politically considered, has indeed passed in the last few months through the various stages of progress from birth to decay and dissolution, to which all movements of the sort seem nowadays to be destined.”709 This publication was not in sympathy with the farmers' movement,710 and was not blinded by enthusiasm for its progress.

709 The Nation, vol. 18, p. 55, “The Farmers' Future.”

710 Ibid., vol. 16, see Index, under The Week, “Railroad excitement in Illinois;” p. 249, “The Farmers' Clubs, and the Railroads;” p. 329, “The Latest Reform Movement;” p. 397, “The Grangers and the Judges;” vol. 17, see Index under The Week, “Farmers' Fallacy,” etc.; vol. 18, pp. 55, 325, 340, 294, “The Cheap Transportation Report;” vol. 19, p. 36, “The Granger Method of Reform;” p. 199, “The Right to Confiscate.”

The Grange, however, protested life and vitality. In December the Grange Advance gives as a news item that there were at that time 21,472 organized granges in the United States, an increase of 364 during the last month. It then asks, Does this look much like dying? But the item is immediately followed by this comment: “Patrons who are now willing to desert the field on account of some little neighborhood troubles or personal differences are like men who have plowed the ground, obtained and sowed the seed, and watched the crop to maturity, refusing to harvest because neighbor Jones, or Smith, or Jenkins, have killed

their bull pup."711 It is evident that the patrons themselves recognized signs of disloyalty and indifference within their ranks.

711 Grange Advance, Dec. 22, 1874, P. of H. column.

The campaign conducted in Minnesota in the summer and fall of 1874 was not very exciting. Hard times dampened the enthusiasm of the people. Mr. Donnelly failed to arouse the interest of the farmers in his Anti-Monopoly party, and the grangers seem to have taken no active part in the campaign in any way.712 The question of railroads and monopolies did not come up for serious discussion. At the election the Republicans elected twenty-four state senators, and the Democrats seventeen. Sixty Republicans and forty-six Democrats were elected members of the lower house.

712 Record and Union, Dec. 11, 1874.

The State Grange met in Mankato December 15, 1874. In 161 his opening address State Master Parsons strongly condemned the new railroad law, asserting that the operation of that law as executed was an actual aggravation of the evil. He believed, however, that one end had been gained, namely, that "We hear no more of chartered rights above and beyond the power of the legislature to restrict. For reasons obvious to the dullest understanding, the corporations affected, with one accord, make haste to yield a ready obedience to the behest of the Commissioners. The fault of this condition of things is not to be found in the provisions of the law itself, but in the execution of those provisions. The measure which we had fondly hoped would afford a relief from our burdens, has been turned against us and made an agent of still greater oppression."713

713 Anti-Monopolist, Dec. 24, 1874; Grange Advance, Dec. 22, 1874.

He reported some progress during the past year by way of securing competition among sellers and thereby reducing the prices of all goods bought by the farmer. He believed

that cheaper transportation could be secured on the same principle by bringing water transportation into competition with the railroads.714

714 Ibid.

At this convention the following resolutions were drawn up and were adopted, it is said, with enthusiasm:

Whereas, One of the greatest causes of the general industrial depression is the want of cheap means of transportation to the seaboard; and

Whereas, This result can only be obtained by competition, secured by the opening of water channels between the Mississippi and the ocean by way of our lakes and rivers; therefore,

Resolved, That we cordially endorse the report of the select committee on transportation submitted to the Senate during the first session of the Congress. * * * *

Resolved, That the present state law for the regulation of railroads is expensive and useless to the people and vexatious to the roads, and we demand its repeal, and in the name of 20,000 voters we demand the passage of a law that shall guarantee cheap transportation for the productions of the farm, especially wheat.

Resolved, That we propose to exercise our right of franchise in defence of our own interests, and we promise to act unitedly at the 11 162 ballot box against those who prove themselves hostile or indifferent to our welfare.

Resolved, That while religion or politics should not be discussed in the work of the Order, we hold that each Grange has a right, and that it is a duty, to discuss and understand all the great economic questions of taxation, which underlie our prosperity as a people, and

that we propose to exercise that right, regardless of its effects upon political parties or politicians.

Resolved, That Minnesota's true outlet for her production to Eastern markets is via Lake Superior, and we call upon the legislature of the state at its coming session to make an appropriation for a survey of the watershed between the St. Croix and Lake Superior to ascertain the best route and the lowest cost of a canal between them.715

715 Anti-Monopolist, Dec. 24, 1874.

The Grange also endorsed the project of opening the Fox and Wisconsin rivers that the people of the Northwest might have another opening by water to the Great Lakes.

These resolutions would seem to indicate that the grangers still had an interest in politics. They here proposed a definite legislative program, and while they did not come out as a new political organization they did pledge themselves to act unitedly at the ballot box against candidates who were hostile or indifferent to their plans. They tried to make a distinction between politics and partisan politics, which does not seem to have been made clear to anyone. As was said in a letter to the Anti-Monopolist: “The great question is settled at last. The Grangers can discuss whatever they please except partisan politics. As no one has ever even wanted to discuss partisan politics, not even Donnelly, I suppose those little creatures who were in favor of the ‘hush up policy’ will hide their heads in shame and silence. If State Master Parsons had said ‘partisan politics’ there would have been no controversy about the matter.”716

716 Ibid., Aug. 13, 1874.

Col. Samuel E. Adams was elected State Master to succeed Mr. Parsons. Mr. Donnelly tried to make political capital out of this fact, construing it as a disapproval of Mr. Parsons' action in forbidding political activity on the part of granges. In the Anti-Monopolist he said: “The State Grange draws a 163 long breath of relief. The old man of the mountain who

had so long ridden it is no more. Parsons is dropped out of sight deeper than plummet ever sounded. * * * He preserved the Republican party in power at the expense of the Patrons of Husbandry. He tried to emasculate the Order and to reduce its members to silence and nothingness. But for his presence we should today have one thousand subordinate Granges in Minnesota, instead of five hundred."717

717 Ibid., Dec. 24, 1874.

With a new state master and a set of resolutions so strongly tinged with politics, the State Grange to all appearances was about to enter the political arena. As a matter of fact, however, the grange masters in convention did not by these resolutions truly express the sentiments of their subordinate granges. The resolutions were not the spontaneous product of grange enthusiasm. They not only failed to arouse enthusiasm, but in many instances they met with determined opposition. Several subordinate granges passed resolutions protesting against the demanded repeal of the railroad laws.718 The grangers were not prepared to take any united action at the ballot box at this time. Many believed that Mr. Donnelly was back of this movement, and later in a speech in the state senate he acknowledged his authorship of the resolutions.719

718 Rochester Post, March 6, 1875.

719 Owatonna Journal, March 4, 1875.

Mr. Parsons was not re-elected state master, but to construe this as a disavowal of his policy of keeping the grange out of politics does not seem to be warranted. Mr. Donnelly, as we have seen, was bitterly opposed to Mr. Parsons personally, and undoubtedly had influence in bringing about his defeat. But Colonel Adams, a war Democrat, who was elected to succeed him, was in favor of the same general policy as Mr. Parsons, and he says that this question did not come up as an issue in the election.720

720 In an interview at his home in Minneapolis, July 27, 1909.

CHAPTER XV. THE GRANGER LAWS REPEALED AND A NEW RAILROAD LAW ENACTED IN 1875.

The railroad law of 1874 had proved disappointing. It was enacted to curb the arbitrary power of the railroads and to make them amenable to state control; but, owing to the financial stringency following the panic of 1873, it had been impossible to give it what its friends would call a fair trial. Business was at a stand-still, and the railroads were unable to meet their obligations incurred in times of optimism and prosperity. At the State Grange an attempt had been made to revive interest in further railroad regulation, but it met with no hearty response. By the winter of 1875 the state press had come to an almost unanimous decision in favor of an about-face in the railroad policy of the state.

The St. Paul Press considered the practical results of the law “mischievous in the extreme,” and believed it “universally demonstrated, because experience has painfully admitted, that the experimental legislation of last winter in this state was a disastrous mistake,” though administered leniently.721

721 The St. Paul Daily Press, Feb. 26, 1875, p. 2, c. 1; “Repeal of the Railroad Law.”

The Minneapolis Tribune characterized the farmers' movement as a senseless railroad war. In its judgment “ten years will not suffice to repair the injury to the state which the law has inflicted. * * * The railroad war of the West is responsible to a great degree for the hard times of which we have been complaining so much recently.”722

722 The Minneapolis Tribune, March 5, 1875, p. 2, c. 1; “The New Railroad Law.”

The St. Paul Dispatch said: “The mistake which has been made in this war upon railroads is now very generally conceded, and few have the temerity to longer attempt to ride upon the commune sentiment as a political hobby.”723 And again: “The comments of

the Stillwater Messenger, reprinted elsewhere, reflect the sentiment of nine-tenths of the people of

723 St. Paul Daily Dispatch, Jan. 21, 1875, p. 2, c. 2; “Paralyzing Business.”

165 Minnesota. We can call to mind but three newspapers724 of the state, which have given expressions to opinions in favor of the present law or any law regulating railroads. We know the business portion of the community desire to see the railroad restriction removed.”725

724 These probably were the Rochester Post (see Feb. 27, 1875), Owatonna Journal (see March 4, 1875), and Record and Union (see Feb. 5, 1875). I found no other papers that stood by railroad control, and these recognized the sentiment against it.

725 St. Paul Daily Dispatch, Feb. 9, 1875, p. 2, c. 1; “A very general sentiment.”

The St. Cloud Press observed: “Never before in this country have the railroad interests felt the result of unjust laws more than now. Never before have the people felt the result of these laws with the same bitterness as now.726

726 Reprinted in the St. Paul Daily Dispatch, Jan. 19, 1875, p. 3, c. 1.

The Grange Advance, a grange organ, in discussing the law of 1874, said: “It was an illy advised law gotten up in a hurry near the close of the session as an excuse for not doing anything else, providing for three commissioners who should stand between the people and the legislature and bear the odium of the failure.”727

727 Grange Advance, March 2, 1875.

The Wisconsin State Grange in its annual meeting, January 14, 1875, in speeches and by resolutions, called for modifications in their granger laws.728 The Wisconsin railroad commissioners reported that the Potter law had proved a failure.729 Governor Taylor likewise frankly admitted that railroad regulation in Wisconsin had not been a

success.730 News of this kind was circulated freely by the press in Minnesota. When the state legislature convened in St. Paul in 1875, it seemed that the “country press joined with the city press in demanding such modifications in the legislation as will enable railroads to operate at a fair profit.”731

728 St. Paul Daily Dispatch, Jan. 19, 1875.

729 Ibid., Jan. 9, 1875, p. 3, c. 1; St. Paul Daily Pioneer, Feb. 17, 1875, p. 2, c. 1; “The Potter Law.”

730 St. Paul Daily Dispatch, Jan. 21, 1875, p. 2, c. 2; “Paralyzing Business.”

731 Minneapolis Tribune, Jan. 16, 1875, p. 2, c. 1; “Steps that should be retraced;” reprinted in St. Paul Daily Dispatch, Jan. 21, 1875, p. 2, c. 2.

Mr. Edgerton, one of the railroad commissioners, made a 166 speech at Mantorville which became generally known as the “confiscation speech.” The St. Paul Pioneer in commenting on the address said: “He shows that he has compelled the Winona and St. Peter railroad to run at a cost of $30,000 a year beyond their receipts, and then he asks: Now let me ask any responsible man if he would advise any greater reduction on this road till the results of a few months would demonstrate its possibility. In other words he says, Can we put our hands deeper into the pockets of the owners of this road, until we find whether, after the end of a few months, they have any more money left for us to take.” The paper goes on to characterize the plan of the railroad commission as a cool and deliberate scheme of legalized plunder.732

732 St. Paul Daily Pioneer, Jan. 16, 1875, pp. 2, c. 1; “A Railroad Commissioner's Boast and Petition.”

The Owatonna Press declared: “A gang of highway robbers would not improve this statement. Not content with taking away all the profits of the Winona and St. Peter road,

the owners are compelled to lose over $30,000 yearly. * * * Is there any wonder there is ‘hard times?’ Let justice be done though the heavens fall.”733 Strange as it may seem, the Winona and St. Peter railroad company, which had been the main factor in exciting the railroad war in 1870, and which again in 1873 had been the chief object of attack, was now pictured as suffering injustice at the hands of men who had been appointed to bring relief to an oppressed people.

733 St. Paul Daily Pioneer, Jan. 16, 1875, p. 2, c. 3; “Another Opinion upon Commissioner Edgerton's Confiscation Speech.”

The general belief seems to have been that the granger movement was more or less directly the cause of the financial depression. The railroad law and the panic became associated in the minds of the people as cause and effect,—they were now suffering the “quick return which communism always reaps for aggressive assaults upon the bulwarks of national existence.”734

734 Ibid., Feb. 26, 1875, p. 2, c. 1; “The People and the Railroads.”

It may be true, as Governor Davis said in his message to the legislature in 1875, that Minnesota was not so badly affected by the panic as other states, but, after all, this was poor consolation. The commercial and industrial interests, and particularly 167 the railroads,735 were the first to suffer, but the effects of the panic were soon shared by the farmer as well. The grangers had looked to the legislature for relief from railroad oppression, and the granger laws had been enacted for their benefit. The railroads now complained that these laws were oppressive and confiscatory, and that they would never regain credit while such laws were in force. Railroads, “reduced to penury and starvation” and compelled by law to serve the public at rates “far below cost,” were no longer oppressors, but victims of oppression. The idea became more and more prevalent that something must be done to help the prostrate railroads and to restore prosperity. The grangers had never planned to cripple the railroad industry. They had meant to control

the roads for the public interest. Though no longer militant, they had no inclination to give up their contention that the state had the right to control railroads. Some change in policy seemed necessary, but many were reluctant about accepting radical changes.

735 The Railroad Gazette, Sept. 27. 1873; “The Railroads First Affected by the Financial Crisis.”

When the legislature met in January, 1875, the senatorial election appeared to be of greater interest to the people and to the legislators than railroad legislation. No one seemed to have very definite ideas as to just what should be done, and no one seemed anxious to commit himself on the railroad question.736

736 St. Paul Daily Dispatch, Jan. 28, 1875; “Where are the Grangers?”

The governor in his message characterized the railroad law of 1871 as crude in its conception, harsh towards the people it intended to benefit, and unjust to the weaker railroads, its sole value lying in the fact that it asserted the right of the legislature to protect the people against excessive rates and unjust discriminations, and that it had been upheld by the courts. But on the whole he favored the law of 1874. “Statutes,” said he, “are generally vindicated or condemned by their results. The statute has resulted in the substantial abolition of local discrimination.”737

737 Minn. Exec. Docs., 1874; Governor's Message.

The railroad commission could not present a very gratifying 168 report. Two railroad companies were in the hands of receivers, three had defaulted in interest of debts, and the others had maintained their credit only by levying assessments on their stockholders.738 They had interfered as little with the railroads as was consistent with the prevention and correction of abuses. The commission believed that the main benefit of the law was that it at an early stage asserted the right of the state “to so far regulate and control these indispensable and beneficent agencies of material and social development as to protect

the people from evils and oppressions that are felt in older communities," and that "the certain effect will be to check and repress the growth of evils that have scarcely any present existence here, but which the experience of older states demonstrates are sure in time to develop."739

738 Minn. Railroad Commissioner's Report, 1874, p. 6.

739 Ibid., p. 9.

In actual operation they had found the pro rata principle too inflexible, and recommended changes looking toward flexibility, that "the rates may be varied to equitably adapt them to the circumstances affecting cost and profit of service on different parts of the same road."740

740 Ibid., p. 8.

When the railroad question finally was taken up for discussion, little enthusiasm was shown one way or another. Mr. Morse of Minneapolis introduced a bill in the House, which substituted a single advisory commissioner for the strong railroad commission under the law of 1874. This bill was favorably acted upon without any particular discussion in the committee of the whole, but when it came up for the final reading in the House, Mr. Brown, who opposed the bill, protested that it was being rushed through without due consideration. He admitted that a reaction had taken place in the minds of the people, making them more favorable to the railroads than before, but he objected to creating the office of railroad commissioner with merely the clerical powers of gathering statistics and reporting to the governor.741 Mr. Egan, in support of the bill, tried to show that the evils to be remedied were future rather than present evils, as indicated in the railroad commissioner's report, and therefore he thought the Morse

741 Record and Union, March 6, 1875; "The Legislature."

169 bill sufficient under present circumstances. Mr. Listoe, another representative, said on the floor of the House that some farmers howled for railroads, and some against them. His people howled for them, and hence he would encourage them by voting for the bill.742

742 Ibid.

The Morse bill passed the House by a large majority, but met with greater opposition in the Senate. The Senate committee on railroads reported against a repeal of the existing law,743 but later a joint committee on railroads agreed to report favorably on the new bill.744 The reports of the Massachusetts railroad commissioner, Mr. Adams, seem to have exerted a considerable influence at this time. Mr. Adams' opinion was that “the only effective restraint upon railroad corporations, consistent with the freedom of action absolutely necessary to successful management of their complicated business, is the moral one of public opinion. * * * He says in substance that experience has demonstrated that no railroad company will persist in palpable abuses in the face of official exposure, backed as it is sure to be by public opinion.”745 Arguments of this nature gave the bill under consideration a strong theoretical justification. It was not to be considered a mere repeal of the old law, but rather a positive measure based on good sound principles.

743 St. Paul Daily Dispatch, Feb. 12, 1875, p. 2, c. 2; “The Railroad Law.”

744 St. Paul Daily Press, Feb. 26, 1875. p. 2, c. 1; “Repeal of the Railroad Law.”

745 Ibid.

The bill did not pass the Senate without a struggle. A number of the Anti-Monopolists of the previous year rallied to the support of the law of 1874, which was about to be repealed. While they did not favor some of its details, they were in sympathy with the principle of state control underlying it. Senator Coggswell, one of their number, denied that the law had injured the railroads. He attributed the cessation of railroad construction to want of capital seeking investment, to the absence of land grants, and to the general lack of

confidence among capitalists in railroads and business management.746 Senator Westfall disowned the law of 1874 as the offspring

746 St. Paul Daily Dispatch, March 3, 1875, p. 2.

170 of the grange movement, considering it merely a compromise measure. He proposed, however, “to hold and stand on the ground already taken,—that the people have a right to regulate freights and tariffs.”747 Senator Donnelly also spoke vigorously against the bill. He had voted against the law of 1874 at the time of its enactment, but he “preferred it to no law at all.”748

747 Rochester Post, March 6, 1875; “Westfall on the Railroad Law.”

748 St. Paul Daily Dispatch, March 3, 1875, p. 2, c. 4.

Those who favored the bill did so for various reasons. Senator Graves “voted for the bill only out of consideration for the impoverished condition of the railroads;”749 Senator Doughty because there was nothing to the bill but repeal.750 Senator Knute Nelson favored a simple repeal instead of this “sugar-coated” bill. He “preferred to take his medicine straight, but was compelled to take it as it was offered.” His constituency were anxious to secure railroads and were of the opinion that the existing law kept capital out of the state.751 There was little enthusiasm for the Morse bill as a positive measure. It passed the Senate by a vote of twenty-eight to thirteen, and was approved by the governor.752

749 Ibid.,March 4, 1875, p. 2; Morse Bill passed, 28 to 13.

750 Ibid.

751 Ibid.

752 Ibid.

The new law753 provided for one railroad commissioner, to be elected at the general election for a term of two years. He was required to give ten thousand dollar bonds, approved by the governor, for the faithful discharge of his duties.754 His salary was fixed at three thousand dollars a year, and provision was made for a secretary at a salary of twelve hundred dollars.755

753 General Laws of Minn., 1875, ch. 103.

754 Ibid., sec. 1.

755 Ibid., sec. 2.

It was made the duty of the commissioner to inquire into the neglect or violation of the laws by the railroad companies or by their employees and officers, to inspect each railroad and its equipment with special reference to public safety and convenience, and to investigate as to financial condition and 171 management.756 He was to report annually to the governor, and to make such suggestions and recommendations as he deemed advisable.757 The president or managing officer of each railroad company was required to report under oath to the railroad commissioner annually, on or before October 1.758 The commissioner was empowered to investigate books and papers, and to examine officers or employees under oath or otherwise. He was given power to issue subpoenas and to compel obedience in these matters, in the same manner as regular courts of law. Wilful obstruction or refusal to give testimony was made a misdemeanor punishable by a fine of not over one thousand dollars.759

756 Ibid., sec. 3.

757 Ibid., sec. 4.

758 Ibid., sec. 5.

759 Ibid., sec. 6.

Railroad companies were prohibited from charging one person or corporation more than another “for a like service from the same place, and upon like conditions and upon similar circumstances;” and all concessions of rates, drawbacks, and contracts for special rates, were to be “open to all persons, companies, and corporations, alike under similar circumstances.”760 Unreasonable charges for any privilege or service on the part of railroad companies was likewise prohibited.761

760 Ibid., sec. 7.

761 Ibid., sec. 8.

It was made the duty of railroads, “when within their power to do so, and upon reasonable notice,” to furnish suitable cars to all who applied, and to “receive and transport such freight with all reasonable dispatch,” and to provide “suitable facilities for receiving the same at any depot” on their lines.762

762 Ibid., sec. 9.

Any railroad company which violated the provisions of this act, as to “extortion or unjust discrimination,” was to forfeit treble damages and costs to the aggrieved party. The railroad law of the previous year was repealed, but the repeal was not to affect any pending action.763

763 Ibid., sec. 10.

The enactment of this law meant a definite change of policy 172 in regard to railroad control.764 The railroad commissioner was given plenary powers to investigate and report, but had no power to prevent or correct abuses. Unreasonable charges, as we noted, were forbidden, but were in no way defined. Discriminations were likewise prohibited, but in

such guarded terms that little substantial protection was afforded. The aggrieved party would have to bring civil action against the railroad company and prove that different charges had been made for “like services from the same place and upon like conditions and similar circumstances,” or must show in court that the charges were unreasonable, or that cars had not been furnished upon reasonable notice, when it was in the power of the railroad companies to do so. Discriminations and extortions were no longer offences against the state and punishable as such. They were again placed within the domain of private law, and the individual aggrieved must himself bring action, and must stand the cost in case of an adverse decision.

764 See the Railroad Gazette, March 13, 1875, p. 109, “Minnesota Railroad Laws;” The Nation, vol. 20, p. 183.

The legislature also passed “An act for the protection of exporters of grain from this state.”765 According to this law, “common carriers” doing business within the state and engaged in the transportation of grain, were required to give a receipt for the amount of grain received and were bound to deliver the same amount to the destination, allowing a maximum of forty-five pounds loss per carload during transportation. Refusal to give such a receipt when demanded made the company liable to a fine of from ten to fifty dollars. In case of refusal or neglect to deliver the amount of grain so receipted, the common carrier was made liable for all loss beyond the legal maximum, and was subjected to a fine of fifty to one hundred dollars for each offence. All prosecutions under this act were to be made in the name of the state, under the direction of the attorney general.766

765 General Laws of Minn., 1875, ch. 88.

766 Ibid., sec. 3.

The purpose of this law was to remedy the “shortage and stealage” abuse against which the farmers and independent shippers had so long contended. The railroads were here called common carriers and the legislature undertook to regulate 173 them in their

transportation of grain. The penalties under the law were not sever, but the manner of enforcing them was in striking contrast with the weak provisions of the act calculated to prevent discriminations and extortions.

These were the important general laws passed at this session. Numerous special laws were passed authorizing cities, counties and towns to issue bonds in aid of railroads.767 This shows that the people in different parts of the state were anxious to see railroad construction resumed. A number of special laws were passed by the legislature to aid railroads. Two railroads were given state swamp lands.768 The St. Paul and Pacific railroad company had its time limit for completion extended, but was bound to charge only just and reasonable rates and to make no unjust and unreasonable discriminations.769 The Minneapolis and St. Louis railroad company was authorized to extend a branch line, and its charter rights were made applicable to this branch, provided passengers and freight were carried over the lines, “at such equitable and reasonable rates as may from time to time be fixed by law.”770 These acts are a reversion to the previous type of railroad regulation. Direct legislative control of railroad rates, as contemplated by the granger laws, had been given up as inexpedient, but the legislature promptly resumed the plan of regulation by special law wherever possible.

767 Special Laws of Minn., 1875, chs. 126, 127, 129, 130, 131, 132.

768 Ibid., chs. 51 and 54, the Taylor's Falls and Lake Superior and the Duluth and Iron Range railroad companies, resp.

769 Ibid., ch. 49.

770 Ibid., ch. 63. Other special acts were chs. 50, 52, 57, 58, 64.

The granger legislature of 1874 had passed laws to control railroad rates and railroad management, but, as we have seen, they also memorialized Congress for river improvements and canals, in order to bring a cheaper means of transportation into

competition with the railroads. The legislature of 1875, which repealed the granger laws and by joint resolution directed the attorney general to discontinue the suit pending by express order of the preceding legislature against a railroad company to have its charter declared forfeited,771 continued the agitation

771 General Laws of Minn., 1875, p. 218; Joint Resolution No. 19. Suit had been brought against the First Division of the St. Paul and Pacific railroad company.

174 for extended and improved water transportation. By joint resolution Congress was requested, verbatim as in 1874, to make a survey of the “water routes between the navigable waters of the Minnesota river and the Red river of the North,” to ascertain the feasibility of a canal connection between the two. Surveys had been made of the two rivers and measures were progressing for improving the navigation on the rivers, it is stated in the resolution, but the surveys were not being made with the idea of connecting the rivers and making them a continuous navigation system.772

772 Ibid., p. 213; Joint Resolution No. 10.

Congress was in like manner “requested” to survey the Red or Otter Tail river to ascertain the feasibility of improving that river from Fergus Falls upward to where the Northern Pacific crossed it near Perham.773 The senators and representatives of the state in Congress were urged to use their influence to secure the improvement of the Red river between Breckenridge and Manitoba,774 of the Mississippi river at St. Paul, 775 and of the Minnesota river.776 It was believed that navigable streams and canals under the control of the federal government would forever remain in competition with railroads and tend to keep down their rates.

773 Ibid., p. 207; Joint Resolution No. 1.

774 Ibid., p. 208; Joint Resolution No. 2.

775 Ibid., p. 210; Joint Resolution No. 5.

776 Ibid., p. 210; Joint Resolution No. 6.

The Minneapolis and St. Paul papers quite generally endorsed the new railroad law. The St. Paul Dispatch had advocated the Morse bill from the time it was introduced.777 The St. Paul Pioneer heartily commended it, and congratulated the state upon its passage; for, "While the new measure in no respect abates the principle of state control, it substitutes for the heavy hand of iron-clad tariffs a system which will accomplish every just reform and at the same time secure capital against the arbitrary persecution which has resulted in blighting railroad interests all over the West. By the new bill the interests of the people are amply guarded, while those of the

777 St. Paul Daily Dispatch, Feb. 23, 1875, p. 2, c. 1, "A Sensible Bill," Feb. 26, 1875, p. 2, c. 1. "The Pending Railroad Bill;" March 1, 1875, p. 2, c. 1, "A Political Movement;" March 2, 1875, p. 2, c. 1, "The New Railroad Law."

175 railroads are secured against violent and communistic confiscation."778

778 St. Paul Daily Pioneer, March 4, 1875, p. 2, c. 1, "The New Railroad Bill."

The Minneapolis Tribune said: "The Morse bill virtually restores to the railroad companies the right to manage and control their own property, which right was taken away from them last winter. * * * Thus has our state at last taken a step calculated in the end to repair the injury inflicted upon her by the senseless railroad war."779

779 Minneapolis Daily Tribune, March 5, 1875, p. 2, c. 1.

The press outside the Twin Cities was not so unanimous in its approval. The Grange Advance said: "A number of our exchanges are amusing themselves by miscellaneously pitching into the new railroad law. * * * While we do not think it perfect, we cannot agree with the broad assertions that are being constantly paraded before the public in the following style: The Minnesota legislature at its recent session virtually sold out to the

railroads and repealed all the legislation of 1874, and left the people at the mercy of the corporations."780

780 Grange Advance, March 2, 1875.

The Owatonna Journal was one of the papers here referred to. It came out strongly against the bill and "asserted unhesitatingly that all the railroad lawyers this side of perdition could not have framed a clause to expressly grant the right of discrimination in better terms or more effectively."781 Exgovernor Austin wrote to the Journal a letter commending it on its attitude and characterizing the repeal of the law of 1874, without enacting a better substitute, as a "criminal piece of stupidity and folly." He predicted an early repeal of the "Morse fraud."782 The Monticello Times agreed with Mr. Austin that the law of 1874 had not been given a fair trial.783

781 Owatonna Journal, March 4, 1875.

782 Ibid., March 25, 1875.

783 Anti-Monopolist, Apr. 15, 1875.

The Rochester Post considered the enactment of the law an "acknowledgment by the legislature that the attempt to fix rates of compensation for transportation services by a different system from that by which other values are fixed has proved a failure."784 Its tone is quite moderate considering

784 Rochester Post.

176 its previous stand. The Windom Reporter called the railroad law a farce, and continued: "Common law guarantees as much protection, and the penalties of the new law will have no effect in frightening the railroads to adopt a reasonable tariff."785 The Winona Republican said: "The bill practically amounts to a total surrender on the part of the state of

the right to regulate railroads * * * it would be better to have no railroad law at all and save the useless clerk hire."786

785 Anti-Monopolist, March 18, 1875, "The Railroad Law;" Windom Reporter quoted.

786 Ibid., March 11, 1875, "The New Railroad Law;" The Winona Republican quoted.

The Anti-Monopolist perhaps came out the very strongest against the repeal of the former law. It called the new law a "sham, a mockery, a delusion, and a snare."787 It quoted the Chisago County Post as saying: "The new railroad law is not well thought of by the state press; in fact, there are few papers in the state that do not denounce the law as a sham conveying no meaning whatever."788 This last statement is too sweeping, but enough quotations have been given to show that the new law was not favorably received by all. There were many throughout the state who were disappointed because the granger law of 1874 was not given a longer trial.

787 Ibid., March 18, 1875.

788 Ibid., March 25, 1875.

CHAPTER XVI. THE SIGNIFICANCE OF THE GRANGER MOVEMENT.

The repeal of the granger laws in Minnesota and the neighboring granger states, following the sudden decline in granger activity, was taken by many as an indication that the granger movement had spent its force and accomplished nothing. But such was hardly the case. The grangers did not succeed in solving the railroad problem, but as a direct result of their revolt against the railroad abuses of their day the fact came to be generally recognized that the people as well as the railroad corporations have "vested rights," and this was no mean contribution toward its solution.

Whenever attempts were made to subject the railroads to regulation in the interest of the people, they sought refuge behind the Dartmouth College decision. In this case the United States supreme court had held that the original charter of Dartmouth College constituted a contract between the Crown and the trustees of the college, which was not dissolved by the Revolution, and that an act passed by the state legislature of New Hampshire altering this charter without the consent of the corporation impaired the obligation of the contract and was therefore null and void.789 All rights once legally vested in corporations were thus placed beyond the reach of subsequent state legislation. “This decision,” said Chancellor Kent approvingly, “did more than any other single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the government; to give solidity and inviolability to the literary, charitable, religious and commercial interests of the country.”790 This statement, made in 1826, seems almost prophetic in the light of later developments. The growth of corporate enterprise and the part this decision was to play could not be foreseen, even by such far-sighted men as Marshall and Kent. The doctrine laid down in this decision was followed in later cases in federal and state courts, and it soon came to be regarded as a settled principle of American constitutional law that charters of private corporations were inviolable contracts between the legislature and the corporators, and that the subsequent power of the legislature was restrained by their terms.791

789 The Trustees of Dartmouth College vs. Woodward, 4 Wheaton, 518; decided 1819.

790 1 Kent's Com., 392; First edition, 1826.

791 See 94 U. S., 185, Stone vs. Wisconsin, dissenting opinion.

This decision did not lead to an amendment of the federal constitution calling for a different interpretation of the provision in question, as did the decision in Chisholm vs. Georgia;792 but the different states began almost immediately to guard against the interpretation of

future charters as inviolable contracts by expressly reserving to the state legislature the right 12

792 2 Dallas, 419; decided 1793. The eleventh amendment was proposed in 1794.

178 to alter, amend, or repeal acts incorporating private corporations.793 The first plan was to insert a provision to this effect in the charter when granted,794 and soon became quite general. Another plan was to make the reservation of legislative power of amendment or repeal applicable by general law to all future charters.795 A third plan was to insert this reservation of power in the state constitution. Beginning with the Delaware constitution as amended by a constitutional convention in 1831, we find that by 1866 this provision is to be found in the constitution of at least fifteen different states.796

793 10 Barbour, 260, New York Supreme Court, 1851; Amer. Law Review, vol VIII, p. 189 (Jan., 1874), “The Dartmouth College Case.”

794 For instance, Laws of New York, 1819, ch. 110, sec. 3; Laws of New Hampshire, 1820, ch. 34, sec. 10. The provision may be found later in charters of most of the states.

795 1 New York Revised Statutes (1829), 600, sec. 8,—this provision dates from Dec., 1827; Session Laws of Mass., 1830, ch. 81; 3 Public Laws of Maine, ch. 503, approved March 17, 1831.

796 Del., Const. of 1831, art. 2, sec. 17.

N. Y., 1846, art. 8, sec. 1. Penn., amend., 1857, art. 1, sec. 26.

Wis., 1848, art. 11, sec. 1. Kan., 1859, art. 12, sec. 1.

Cal., 1849, art. 4, sec. 31. W. Va., 1861, art. 11, sec. 5.

Mich., 1850, art. 15, sec. 1. Nev., 1864, art. 8, sec. 1.

Ohio, 1851, art. 13, sec. 2. Md., 1864, art. 3, sec. 51.

Ore., 1857, art. 11, sec. 2. Mo., 1865, art. 8, sec. 4.

Iowa, 1857, art. 8, sec. 2. Tex., 1866, art. 7, sec. 31.

From the great amount of legislation and constitutional enactment which it provoked, it is evident that the doctrine promulgated in the Dartmouth College decision was regarded as new and not altogether acceptable by the different states. And as time went on and railroads were built and railroad corporations grew in power, the situation became more and more serious; for the new corporations, though controlling an essential factor in the economic life of the country, claimed exemption from state regulation in the interests of the public they were serving as common carriers, because their charter rights were constitutionally beyond legislative interference. Even where reservation had been made that charters might be altered or repealed, it was a matter of grave doubt in some quarters whether, after all, this reservation was not an empty formula.797 If a company had vested rights in the franchises

797 1 Amer. Law Rev., 451, 456, ff. (Apr., 1867); “Legislative Control over Railway Charters.”

179 granted, to what extent would the legislature be authorized to interfere materially with these property rights? And the United States supreme court later did decide that the reserved power of alteration and amendment was not without limit, but that “the alterations must be reasonable, they must be made in good faith, and be consistent with the scope and object of the act of incorporation.”798

798 95 U. S., 319, 324; Shields vs. Ohio.

The right of the legislature to control its own creatures, the corporations, was at the time of the granger movement no longer an academic question of political and legal theory; it was a vital question in the economic life of the country, and it had to be faced squarely.

Thomas M. Cooley, the eminent jurist, expressed his opinion of the situation in 1873 as follows: “It is under the protection of the decision in the Dartmouth College case that the most enormous and threatening powers in our country have been created; some of the great and wealthy corporations actually having greater influence in the country at large, and upon the legislation of the country, than the States to which they owe their corporate existence. Every privilege granted or right conferred—no matter by what means or on what pretence—being made inviolable by the Constitution, the government is frequently found stripped of its authority in very important particulars by unwise, careless, or corrupt legislation; and a clause of the Federal Constitution, whose purpose was to preclude the repudiation of debts and just contracts, protects and perpetuates the evil.”799

799 Cooley, Constitutional Limitations, Third ed., 1874 (preface dated Dec., 1873), pp. 279, 280 note. This statement is not found in the first edition, published in 1867, before the granger movement had brought the question into prominence.

In an address in 1873 James A. Garfield criticised the judicial application of the Dartmouth College case, and ventured the opinion that some feature of that opinion as applied to the railway and similar corporations must give way under the new elements which time had added to the problem, and said further: “It will be a disgrace to our age and to us if we do not discover some method by which the public functions of these organizations may be brought into full subordination, and that 180 too without violence and without unjust interference with the rights of private individuals.”800

800 James A. Garfield, “The Future of the Republic, its Dangers and its Hopes;” 5 Legal Gazette (Phila.), 408–9, Dec. 19, 1873.

Railroads had from their first appearance been considered common carriers, both in England and in the United States;801 and, this being the case, many failed to see why railroads should not, like other common carriers, be subject to legislative regulation. That railroads, though constructed by private corporations and owned by them, were public

highways, had been the doctrine of nearly all the courts since the earliest days of railroad construction.802 Because they were public highways for the public benefit, the right of eminent domain had always been given to them;803 and courts had frequently held that the public had an interest in such roads, whether they were owned and operated by a private corporation or not.804 Because railroads performed public duties and functions and were indispensable to the public interests, the state legislature could rightfully tax or authorize taxation for the purpose of aiding railroads.805 The United States supreme court in 1872 expressed this doctrine in the following words: “A railroad built by a state no one claims would be anything else than a public highway, justifying taxation for its construction and maintenance, though it could be no more open to public use than is a road built and owned by a corporation. Yet it is the purpose and the uses of a work which determine its character.”806

801 See Redfield on Carriers and other Bailees (Cambridge, 1869), ch. 3, “Railroads Common Carriers,” and cases there cited.

802 Alcott vs. The Supervisors, 16 Wall., 678.

803 Sharpless vs. The Mayor of Philadelphia, 21 Penn. State Reports, 147, 169–170; decided 1853.

804 Ibid., 169; 2 Mich., 427; 18 Minn., 482; 56 Ill., 377–379; see also 3 Wall., 654, 663, and cases there cited.

805 21 Penn. State Reports, 147; 2 Mich., 427; 3 Wall., 654; for arguments contra, see 20 Mich., 462.

806 Alcott vs. The Supervisors, 16 Wall., 678, 696.

The railroads reaped all the benefits of their quasi-public character, but in the matter of business management they claimed to be private corporations subject only to such

provisions a were to be found in their charters. The railroads may have had some reason to fear the legislatures of the time. On 181 the other hand, the people had grievances against the railroads, some imaginary and unfounded, perhaps, but many were very real and substantial, and particularly in the western states the people were in no mood to permit court decisions of the past to stand in the way of redressing existing wrongs. Lawyers who had not forgotten the Dartmouth College decision began in some places to find themselves ineligible to the elective judiciary.807 The courts had always in the past been ready to protect the corporations in their chartered rights, but the people now began to demand that the courts should be equally ready to insist that they perform faithfully to the public those duties which were the objects of their chartered powers.808

807 Martin, History of the Grange Movement (1873), p. 335.

808 See 56 Ill., 365, 379.

The granger movement was an attempt on the part of the people to secure control over railroad corporations and to prevent extortionate and discriminating rates by legislation, which, according to the usually accepted understanding of the Dartmouth College decision, would be unconstitutional. The granger states were those whose legislatures enacted such laws and provided means for their enforcement. Cases involving the constitutional rights of state legislatures to regulate railroad rates soon came before the United States supreme court from three of the four granger states, namely, Iowa, Wisconsin, and Minnesota.809 The railroads contended that state laws fixing maximum rates, or authorizing railroad commissions to do so, were unconstitutional, because they impaired the obligation of the charter contract, because they virtually deprived the corporations of property without due process of law, and, finally, because such laws were a regulation of inter-state commerce over which Congress had been given exclusive jurisdiction.810 The constitution of the state of Wisconsin reserved to the legislature the right to amend or repeal charters.811 The railroad corporations here argued that this reservation clause must be construed in connection with the fourteenth amendment

809 From Iowa, 94 U. S., 155; from Wisconsin, 94 U. S., 164, 179, and 181; from Minnesota, 94 U. S., 180 and 181, note.

810 The Chicago, Burlington and Quincy Railroad Company vs. Iowa, 94 U. S., 155, 158, ff.

811 Const. of Wis., Art. 11, sec. 1.

182 of the federal constitution, for the right to a reasonable compensation for their services was not a franchise or privilege granted by the state, but an inherent right which could not be abridged or impaired by the state,—the question of reasonableness was not for legislative but for judicial determination.812

812 Peck vs. Railroad Company, 94 U. S., 164, 167.

The supreme court, however, followed the decision it had just rendered in the case of Munn vs. Illinois.813 In this case it had held constitutional an Illinois statute which fixed the maximum charges for the storage of grain in warehouses at Chicago and other places in the state having not less than one hundred thousand inhabitants. The court asserted that, under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his property; when the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of such interest, submit to be controlled by the public for the common good as long as he maintains the use; of the propriety of legislative interference within the scope of legislative power, the legislature is the exclusive judge.814

813 94 U. S., 113; decided 1876.

814 Ibid., see summary.

In applying the principle of this decision in the railroad cases the court disappointed the railroads, for they had relied on the Dartmouth College decision as a precedent. It had been so long judicially declared that it was supposed to be no longer open to discussion, that charters of private corporations were inviolable contracts, protected by constitutional guarantees against legislative interference.815 The decisions in the granger cases did not overrule the Dartmouth College decision, but they did assert the general principle that a legislature has a right to regulate the compensation for the use of all property and for services in connection with it, the use of which affects the community at large, even though the charter of a company confers upon it the right to charge reasonable rates.816 The

815 See Stone vs. Wisconsin, 94 U. S., 185, dissenting opinion.

816 Ibid., 186.

183 railroads could no longer seek refuge behind the “impregnable barrier thrown around all rights and franchises derived from the government” by the Dartmouth College decision.817 As public highways and common carriers, they were held subject to state regulation, and thus were “practically placed at the mercy of the legislature of every state.”818

817 1 Kent's Com., 392, first edition.

818 94 U. S., 185. See C. F. Adams, Railroads, their Origin and Problems, pp. 127, 129, 147.

Later decisions have modified to some extent the principles laid down in the granger cases, and afford the railroads ample protection by a liberal interpretation of the fourteenth amendment, which makes the federal judiciary the final judge as to the reasonableness of rates prescribed according to state law.819 But since the granger movement in the early seventies and the decisions handed down by the federal supreme court in the granger

cases in 1876, the railroad corporations have not laid claim to vested rights beyond reasonable legislative control.

819 Chicago, Milwaukee and St. Paul Railroad Company vs. Minnesota, 134 U. S., 418, decided March 24, 1890; see dissent by Justice Bradley, p. 461, ff. Reagan vs. Farmers' Loan and Trust Company, 154 U. S., 362. Smyth vs. Ames, 169 U. S., 466.

BIBLIOGRAPHY.

The following publications have been examined in the preparation of this thesis, many of them being cited in its footnotes.

Acts, Joint Resolutions and Memorials passed by the First Legislative Assembly of the Territory of Minnesota, 1849. Republication of Important General Laws of Wisconsin now in force in the Territory of Minnesota, by Provision of the Organic Act, 1849. (These are published together, and the chapters are numbered consecutively throughout the volume.)

Session Laws of the Territory of Minnesota, 1850–1857. (Published annually; extra session in 1857.)

Collated Statutes of the Territory of Minnesota and Decisions of the Supreme Court; collated pursuant to a Resolution of March 5, 1853. St. Paul, 1853.

Public Statutes of the State of Minnesota, 1849–58.

General and Special Laws of Minnesota, 1858–1875. (Annual sessions; no session in 1859; extra session in 1862.)

The General Statutes of the State of Minnesota, 1866.

An Analytical Index to the General and Special Laws of the Territory and State of Minnesota from 1849 to 1875. By John C. Shaw and John B. West . St. Paul, 1876.

Journals of the Council and of the House of Representatives of the Territory of Minnesota. (The Legislative Assembly met annually from 1849 to 1857, with an extra session in 1857. The Governors' Messages are found in these Journals.)

Journals of the Senate and of the House of Representatives of the State of Minnesota, from 1858 to 1875. No session in 1859.

Debates and Proceedings of the Minnesota Constitutional Convention; Officially Reported by Francis H. Smith . [Democratic.*] St. Paul, 1857.

* Two constitutional conventions convened independently of each other in St. Paul; for both Democrats and Republicans claimed victory at the polls. Neither convention recognized the other, but unofficially they compared work as they proceeded and finally agreed upon the same constitution, word for word. The constitution was accepted almost unanimously by the people. The enrolled copy of the Democrats was sent to Washington. The other is preserved in the Library of the Minnesota Historical Society in the capitol at St. Paul. See Neill's History of Minnesota, 1858, pp. 627–8.

Debates and Proceedings of the Constitutional Convention for the Territory of Minnesota; T. F. Andrews , Official Reporter to the Convention. [Republican.*] St. Paul, 1858.

Minnesota Executive Documents, 1860–1875. (These contain the governors' messages, auditors' reports, treasurers' reports, etc.)

Reports of the Railroad Commissioner for the years 1871 to 1873, inclusive; annual.

Report of the Railroad Commissioners for the year 1874. (Under the law of 1874 a board of three commissioners was appointed, and served until the repeal of this law the following

year. From 1875 to 1884, inclusive, a single railroad commissioner served and presented annual reports. The present Railroad and Warehouse Commission dates from 1885.)

Reports of Railroad Commissions or Commissioners of other states, particularly of Massachusetts, Ohio, Illinois, and Wisconsin.

Annual Reports of the Secretary of the Board of Agriculture [of Massachusetts]. Boston; 1854, and onward.

A. J. Edgerton [Minnesota Railroad Commissioner], Compilation of the Railroad Laws of Minnesota; St. Paul, 1872.

Original Records in the Office of the Secretary of State of Minnesota, in St. Paul.

Minnesota: Its Place among the States; being the First Annual Report of the Commissioner of Statistics, for the Year ending January 1st, 1860. Hartford, Conn. 1860.

Second Annual Report of the [Minnesota] Commissioner of Statistics, for the years 1860 and 1861. St. Paul, 1862.

Legislative Manuals of the State of Minnesota.

Opinions of the Attorneys General of the State of Minnesota, 1858–1884; St. Paul, 1884.

Session Laws and Revised Statutes of the following states: Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, Kentucky, Ohio, Indiana, Illinois, Michigan, Wisconsin, Iowa, Missouri, Kansas, Nebraska, and Oregon. (In tracing the origin of the Minnesota territorial railroad charters, special attention was given to the turnpike, canal, plank road, and early railroad charters of these states. See Chapter II.)

State Constitutions and the Federal Constitution.

State Court Reports of Minnesota, Michigan, Illinois, and Pennsylvania, cited in this work.

The following are important Minnesota Supreme Court cases dealing with the railroad gross income tax and railroad land grants:

Railway Co. v. Parcher, 14 Minn., 297.

Minnesota v. Railway Co., 21 Minn., 315; 472.

Railway Co. v. St. Paul, 21 Minn., 526.

Ramsey County v. Railway Co., 33 Minn., 537.

Todd County v. Railway Co., 38 Minn., 163.

St. Paul v. Railway Co., 38 Minn., 163.

State v. Luther, 56 Minn., 156.

Minnesota v. Fred. Stearns, 72 Minn., 200. (Reversed Stearns v. Minn., 179 U. S., 223.)

United States Supreme Court Reports.

United States Statutes at Large.

The following is a list of United States Statutes concerning land grants to Minnesota:

Act of June 29, 1854, 10 U. S. Statutes, 302, Land grant.

Act of Aug. 4, 1854, 10 U. S. Statutes, 575, above grant repealed.

Act of March 3, 1857, 11 U. S. Statutes, 195, Land grant.

Act of March 12, 1860, 12 U. S. Statutes, 3, Swamp lands granted.

Act of July 12, 1862, 12 U. S. Statutes, 624, Route changed and land grant.

Act of May 5, 1864, 13 U. S. Statutes, 64, Land grant.

Act of May 12, 1864, 13 U. S. Statutes, 72, Land grant.

Act of July 2, 1864, 13 U. S. Statutes, 365, Northern Pacific grant.

Act of March 3, 1865, 13 U. S. Statutes, 526, Grant of 1857 increased.

Act of July 4, 1866, 14 U. S. Statutes, 87, Land grant.

Act of July 13, 1866, 14 U. S. Statutes, 93, makes up probable deficiencies.

Act of July 13, 1866, 14 U. S. Statutes, 97, relating to choice of lands.

Public Lands: Local and Temporary Laws. Revised Edition, 1882. Government Printing Office, 1883.

Senate Reports.

House of Representatives Reports.

Congressional Globe.

Annual Reports of the Commissioner of Patents (on Agriculture), 1837–1861, incl.

Annual Reports of the Commissioner of Agriculture, 1862–1888, incl.

Department of Agriculture; Special Report, No. 2, 1883.

Library of Congress

List of Agricultural and Pomological Societies, Farmers' Clubs, etc., on the books of the Department of Agriculture, July 1, 1870. (47 pages.) Washington, 1870.

Tenth Census of the United States; Report, Volume VII.

Eleventh Census of the United States; Report on Wealth, Debt, and Taxation.

Adams, Charles Francis, Jr . Railroads, their Origin and problems; Revised Edition, New York, 1878. The Granger Movement; 120 N A. Review, 394.

An Address of the Anti-Monopoly Party of Minnesota to their Constituents. A Review of the Legislation of 1874. (Prepared by a committee, Ignatius Donnelly , chairman.) St. Paul, 1874.

Cooley , T. M. A Treatise on the Constitutional Limitations which rest upon the Legislative Power of the States of the American Union. First edition, Boston, 1868; third edition, Boston, 1873.

Crawford , J. B. The Credit Mobilier of America, its Origin and its History. Boston, 1880.

Darrow , J. W. Origin and Early History of the Order of Patrons of Husbandry. Chatham, N. Y., 1904. (This pamphlet is based on O. H. Kelley's book on this subject.)

Donaldson, Thomas . The Public Domain, its History and Statistics. Government Printing Office, 1884.

Donnelly, Ignatius . Facts for the Grangers. (A pamphlet of 21 pages.) St. Paul, 1873.

Folwell, William Watts . Minnesota, the North Star State. In American Commonwealths series: Boston and New York, 1908.

Garfield, James A. The Future of the Republic: Its Dangers and its Hopes. (An address delivered in 1873.) Reported in Legal Gazette, Philadelphia, Dec. 19, 1873.

Goodwin , T. S. [Nom de plume, Gracchus Americanus .] The Grange, a Study in the Science of Society. G. P. Putnam's Sons, 1874.

Gordon , J. H. Illinois Railway Legislation and Commission Control since 1870. Illinois University Studies, vol. I.

Kelley, Oliver H. Origin and Progress of the Order of Patrons of Husbandry in the United States; A History from 1866 to 1873. Philadelphia, 1875.

Kent, James . Commentaries on American Law. 4 volumes; New York, 1826.

Larrabee, William . The Railroad Question. Chicago, 1893.

McKee , T. H. The National Conventions and Platforms of All Political Parties, 1789–1900. Third edition, Baltimore, 1900.

Martin , E. W. History of the Grange Movement, or The Farmers' War against Monopolies. Philadelphia, 1873.

Meyer, Balthasar H. A History of Early Railroad Legislation in Wisconsin. Wis. Historical Society Collections, vol. XIV, pages 206–300; Madison, Wis., 1898.

Million, John W. Aid to Railways in Missouri. Chicago, 1896.

Neill, Edward D. The History of Minnesota from the Earliest French Exploration to the Present Time [1858]. J. B. Lippincott and Co., Philadelphia, 1858.

Paine , A. E. The Granger Movement in Illinois. Illinois University Studies, vol. I.

Parker , N. H. The Minnesota Handbook for 1856–7. Boston, 1857.

Periam, Jonathan . A History of the Origin, Aims and Progress of the Farmers' Movement. Chicago, 1874.

Poor, Henry V. Manual of the Railroads of the United States. New York, 1868, and onward.

Prospectus of the Southern Minnesota Railroad Company, 1865; ibid., 1869.

Redfield , I. F. The Law of Carriers of Goods and Passengers, Private and Public, Inland and Foreign, by Railway, Steamboat, and Other Modes of Transportation. Cambridge, Mass., 1869.

Richardson, James D. A Compilation of the Messages and Papers of the Presidents, 1789–1897. Ten volumes, Government Printing Office, Washington, 1896–99.

Sanborn , J. B. Congressional Grants of Land in Aid of Railways. Madison, Wis., 1899.

Scott , W. A. Repudiation of State Debts. New York and Boston, 1893.

Smalley , E. V. The History of the Republican Party from its Organization to the Present Time, to which is added a Political History of Minnesota from a Republican Point of View. St. Paul, 1896.

Smith, Stephe . Grains for Grangers, Discussing all Points bearing upon the Farmers' Movement for the Emancipation of White Slaves from the Slave Power of Monopoly. Union Pub. Co., Chicago, Cincinnati, San Francisco, 1873.

Stickney , A. B. The Railway Problem, with Many Illustrative Diagrams. St. Paul, 1891.

Tribune Almanac and Political Register. New York.

World Almanac . New York.

The following Minnesota newspapers have been quoted or directly referred to in this work:

Anti-Monopolist, St. Paul.

Duluth Minnesotian.

Duluth Weekly Tribune.

Farmers' Union, Minneapolis.

Federal Union, Rochester.

Grange Advance, Red Wing and St. Paul.

Hastings Gazette.

Minnesota Record, Rochester.

Minneapolis Daily Tribune.

Monticello Times.

Owatonna Journal.

Owatonna Press.

Record and Union, Rochester.

Red Wing Argus.

Rochester Post.

Sauk Rapids Sentinel.

St. Charles Herald.

St. Cloud Journal.

St. Cloud Press.

St. Paul Daily Dispatch.

St. Paul Evening Journal.

St. Paul Daily Pioneer.

St. Paul Weekly Pioneer.

St. Paul Weekly Pioneer Press.

St. Peter Tribune.

Stillwater Messenger.

Wabasha Weekly Herald.

Wells Atlas (Faribault County).

Windom Reporter.

Winona Republican.

The following out-of-state newspapers and periodicals have been quoted or referred to:

American Law Review, Boston.

Cultivator and Country Gentleman, Albany, N. Y.

Harper's Weekly, New York.

Legal Gazette, Philadelphia.

Monthly Journal of Agriculture; New York, 1846–48.

Nation, New York.

New York Daily Tribune.

North American Review, New York (Boston till 1877).

Railroad Gazette, New York.